

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 NINTH STREET, NW
SUITE 1000
WASHINGTON, DC 20004-2134
WWW.TROUTMANSANDERS.COM

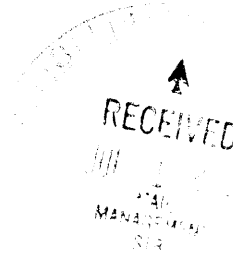
William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Direct Fax: 202-654-5621

July 1, 2003

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423



E1-198
When Fall

Re: *Kansas City Southern - Control - The Kansas City Southern Railway Company,
Gateway Eastern Railway Company, And The Texas Mexican Railway Company -
Finance Docket No. 34342*

Dear Secretary Williams:

I am enclosing herewith an original and twenty-seven copies of the Environmental Appendix (**KCS-13/TM-13**) submitted on behalf of Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company and The Texas Mexican Railway Company in the above captioned proceeding. A copy of is also included on a diskette. Please post the entire Environmental Appendix on the STB's website as soon as possible so that it may be accessed by the public.

A copy of the Environmental Appendix has been served on all parties of record and the governors, departments of transportation, public service commissions and environmental agencies for the following states which are impacted by this proceeding: Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas. It has also been served on the U.S. Environmental Protection Agency, including Regions 4, 5, 6 and 7. Publication of a notice of the availability of the Environmental Appendix has been initiated in the requisite newspapers.

Please acknowledge receipt and filing of the enclosed Environmental Appendix by receipt date-stamping the twenty-sixth and twenty-seventh copies of this letter, the Interested Parties cover letter and the Environmental Appendix and return them to the courier making the filing for return to me.

If there are any questions concerning this filing, please contact me at 202-274-2953.

Sincerely,



William A. Mullins

Enclosures
cc: Parties of Record

ENTERED
Office of Proceedings
Part of
Public Record

TABLE OF CONTENTS

	<u>PAGE NO.</u>
I. Introduction	3
II. Description of Proposed Transaction	4
III. Purpose and Need	5
IV. The Surface Transportation Board's Regulatory Review Process	7
V. NEPA and Its Implementing Regulations	8
VI. Applicability to this Case	11
VII. KCS's and Tex Mex's Analysis	13
VIII. Safety Integration Plan	16
IX. KCS's and Tex Mex's Preliminary Conclusion	16
X. Public Participation	17
Exhibit A Maps	
Exhibit B Environmental Data	
Exhibit C STB Decision No. 2	
Exhibit D Safety Integration Plan	

I. INTRODUCTION

On May 14, 2003, Kansas City Southern (“KCS”) filed an application (the “Application”)¹ with the Surface Transportation Board (“Board” or “STB”) seeking the Board’s approval for KCS to acquire control of The Texas Mexican Railway Company (“Tex Mex”) while continuing to control The Kansas City Southern Railway Company (“KCSR”) and Gateway Eastern Railway Company (“Gateway Eastern”).² KCS and Tex Mex have stated that the transaction would result only in insignificant environmental impacts.

KCS and Tex Mex have discussed their proposed transaction with the Board’s Section of Environmental Analysis (“SEA”) and explained their position (which is discussed in more detail below) that the KCS/Tex Mex transaction is subject to a “categorical exclusion” from environmental analysis under the National Environmental Policy Act of 1969 (“NEPA”) and the Board’s environmental rules (that is, that it falls into “a category of actions that do not individually or cumulatively have a significant effect on the human environment”³). The Board has indicated that the information set forth in the Application is sufficient to create a presumption that this transaction is covered by a categorical exclusion.⁴ However, it is important

¹ The STB has posted the entire text of the Application, including the Operating Plan which details the projected traffic changes affected by the transaction, on the Board’s Web site. The Application may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled “Filings.” The Application is listed under May 14, 2003, and identified by Filing ID No. 207805 and Docket No. FD_34342_0.

² As used herein, “KCS” includes Kansas City Southern and its railroad subsidiaries including KCSR and Gateway Eastern unless noted differently.

³ 40 C.F.R. §1508.4; 49 C.F.R. 1105.6(c).

⁴ *Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, And The Texas Mexican Railway Company*, STB Finance Docket No. 34342 (STB served June 9, 2003) (Decision No. 2) slip op. at 16. A copy of the decision is attached as Exhibit C herein.

that the public be afforded an opportunity to review and comment on KCS/Tex Mex's conclusion that the transaction would not result in significant environmental impacts and does not warrant further environmental documentation. SEA, therefore, requested that KCS and Tex Mex prepare an Environmental Appendix providing further information to support their conclusion. On June 9, 2003,⁵ the Board issued a decision accepting the Application as a "minor" transaction.⁶ In its decision, the Board directed KCS/Tex Mex to submit the Environmental Appendix to SEA by June 23, 2003, and to distribute the Environmental Appendix for public review and comment by July 1, 2003.

The Environmental Appendix and related materials are set forth below. Please review them, and if you wish to submit comments, please follow the directions below in the "Public Participation" section. SEA invites comments, by July 31, 2003, on all aspects of the KCS/Tex Mex Environmental Appendix and on whether the proposed transaction has the potential to cause significant environmental impacts that would warrant the preparation of further environmental documentation. Based on SEA's consideration of all timely comments and its own independent review of all available information, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether a categorical exclusion covers this proposal, or alternatively, whether an Environmental Assessment or Environmental Impact Statement should be prepared.

⁵ See Exhibit C.

⁶ The Board's regulations separate control and other consolidation transactions into four types: Major, significant, minor, and exempt. A "major" transaction is a control or merger involving two or more Class I railroads. (See footnote 7 for the definition of a Class I railroad). A "significant" transaction is a transaction not involving two or more Class I railroads that is of regional or national transportation significance. A "minor" transaction is a transaction involving more than one railroad and which is not major, significant, or exempt. A transaction is "exempt" if it fits into one of seven categories described in the regulation. 49 C.F.R. § 1180.2

II. DESCRIPTION OF THE PROPOSED TRANSACTION

KCS is a non-carrier holding company that directly controls KCSR and KCSR's wholly-owned subsidiary, Gateway Eastern. KCS is headquartered in Kansas City, Missouri. KCSR is the smallest Class I railroad.⁷ KCSR owns and operates approximately 3,100 miles of main line tracks in ten Midwestern and southern states (Kansas, Missouri, Illinois, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, Mississippi, and Alabama). Gateway Eastern is a Class III rail carrier that owns and operates approximately seventeen miles of rail lines between East Alton, Illinois and East St. Louis, Illinois. Gateway Eastern is a wholly-owned subsidiary of KCSR. (See maps at Exhibit A to this Environmental Appendix.)

Tex Mex is a Class II rail carrier that owns and operates 157 miles of rail line between Laredo and Corpus Christi, Texas. Pursuant to the Board's 1996 order in the UP/SP merger proceeding,⁸ Tex Mex also operates over trackage rights on Union Pacific Railroad Company ("UP") lines between Robstown and Beaumont, Texas. (See maps at Exhibit A.)

KCS has acquired from TFM, S.A. de C.V. ("TFM") 51% of the shares of Mexrail, Inc. ("Mexrail") which owns all of the stock of Tex Mex. Mexrail also owns 100% of the U.S. portion of the bridge structure (but not the rail or associated track materials) of the International Rail Bridge over the Rio Grande River at Laredo. The 51% of the Mexrail shares acquired by KCS are currently in a voting trust pending STB approval of this transaction.

⁷ The Board's regulations divide railroads into three classes based on annual carrier operating revenues (in 1991 dollars). Class I railroads are those with over \$250 million in annual revenues; Class II railroads are those with annual carrier operating revenues of more than \$20 million but less than \$250 million; and Class III railroads are those with annual carrier operating revenues of \$20 million or less. See 49 C.F.R. Part 1201, General Instruction 1-1(a).

⁸ *Union Pacific Corporation, et al. – Control and Merger - Southern Pacific Rail Corporation, et al.*, 1 S.T.B. 233 (1996), *aff'd sub nom., Western Coal Traffic League, et al. v. Surface Transportation Board, et al.*, 169 F.3d 775 (D.C. Cir. 1999).

TFM is a railroad located solely in Mexico that is jointly owned by Grupo TMM, S.A. (“TMM”), a Mexican non-carrier holding company, KCS, and the Mexican government. KCS and TMM have also reached agreements to bring the shareholders of TFM and the shareholders of KCS into one unified holding company. If these agreements are consummated, TFM will be brought under the control of KCS, and KCS will change its name to NAFTA Rail.

The proposed KCS/Tex Mex transaction would be an entirely “end-to-end” coupling of the existing KCS and Tex Mex systems with no overlapping or parallel routes. KCS does not plan any construction or abandonment of rail lines as a result of the transaction. KCS/Tex Mex will continue to interchange traffic at all existing gateways affected by the transaction, and KCS/Tex Mex anticipate that continued service on the combined KCS/Tex Mex network will be as good as, or better than, today’s service.

III. PURPOSE AND NEED

As explained in more detail in the Application and Operating Plan, KCS and Tex Mex believe that the transaction would generate more effective service to their customers and provide a better ability to compete in the increasingly concentrated rail marketplace that surrounds them. The proposed transaction would provide shippers and receivers with enhanced competition, better equipment utilization, improved plant maintenance, new opportunities for single line-type service, and other operating efficiencies. The proposed transaction also would help Tex Mex’s financial position and ability to invest in its infrastructure.

KCS and Tex Mex expect relatively modest increases in traffic. KCS and Tex Mex anticipate that, as a result of common control of KCS and Tex Mex, approximately 6,313

carloads of traffic⁹ will be diverted to the combined KCS/Tex Mex system annually (by the end of the third year following the consummation of common control). KCS and Tex Mex explain that KCS/Tex Mex common control would generate less than a one percent increase in KCS traffic and less than a seven percent increase in Tex Mex traffic. KCS and Tex Mex predict that much of the diverted traffic would be interchanged with eastern carriers CSX Transportation, Inc. and Norfolk Southern Railway Company (NS). KCS and Tex Mex state that all of the increased traffic resulting from the transaction could be accommodated on existing trains. KCS and Tex Mex anticipate no need for new rail facilities, as existing lines, yards, and terminals have capacity to handle the expected increases. KCS and Tex Mex also project few changes in traffic patterns and operations. KCSR and Tex Mex have shared common ownership since 1995, and have connected their two systems since 1996 through Tex Mex's trackage rights over UP. KCSR and Tex Mex would continue to operate as separate companies after this transaction.

IV. THE STB REGULATORY REVIEW PROCESS

The Board is an independent federal agency with jurisdiction over certain surface transportation matters, including railroad control transactions, acquisitions and mergers. *See* 49 U.S.C. §§ 11321-11326. As stated above, the Board has already accepted the Application as a minor transaction. Therefore, unless the Board determines that KCS's acquiring control of Tex Mex is likely to result in a substantial diminution in competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and that the anticompetitive effects of the transaction outweigh the public interest in meeting significant

⁹ The proposed transaction is expected to increase the annual gross ton-miles on the Tex Mex (including trackage rights) by about 21.4 percent or approximately 600 million gross ton-miles. The KCS's annual gross ton-miles are expected to increase by 1.8 percent or approximately 789 million gross ton-miles annually.

transportation needs, the Board is required by statute to approve and authorize the proposed transaction. 49 U.S.C. 11324(d).

In railroad merger and control matters, a Board decision approving a transaction would not require the railroads involved to transport more freight or to transport existing freight by any specific route. Rather, the Board's decision is intended to allow railroads to increase the geographic scope of their rail line systems by acquiring control over the facilities of other railroads and, thereby, operate more efficiently and compete more effectively with other railroads and transportation modes. Railroads make decisions on an ongoing basis regarding which routes they will use in response to changes in market conditions, the economy and shipper demands.

V. NEPA AND ITS IMPLEMENTING REGULATIONS

NEPA¹⁰ generally requires federal agencies to consider “to the fullest extent possible” environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.”¹¹ Regulations governing implementation of NEPA have been promulgated by the Council on Environmental Quality (“CEQ”),¹² and by the Board.¹³ The SEA is responsible for conducting the environmental review on behalf of the Board, evaluating potential environmental impacts, and recommending environmental mitigation conditions to the Board.¹⁴

¹⁰ 42 U.S.C. §§ 4321 et seq.

¹¹ 42 U.S.C. §§ 4332(2)(c).

¹² 40 C.F.R. Parts 1500-1508.

¹³ 49 C.F.R. Part 1105.

¹⁴ In imposing environmental mitigation conditions, the Board has consistently focused on the potential environmental impacts that would result directly from transaction-related changes in

Under the CEQ and STB regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare a full Environmental Impact Statement (“EIS”).¹⁵ Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited Environmental Assessment (“EA”).¹⁶ (An EA is a document containing environmental analysis sufficient for the STB to determine whether it should prepare an EIS or may make a finding that the transaction will have no significant environmental impact.)

Finally, actions whose environmental effects are ordinarily insignificant may normally be excluded from NEPA review.¹⁷ Included in this category are control transactions that would not result in operating changes that exceed certain thresholds – generally an increase in rail traffic of at least eight trains a day or 100% in traffic volume (measured in gross ton miles annually).¹⁸ The following table sets out the Board’s thresholds:

activity levels on existing rail lines and at rail facilities. The Board typically does not require mitigation for pre-existing environmental conditions, such as the effects of current railroad operations.

¹⁵ 40 C.F.R. § 1501.4(a)(1); 49 C.F.R. §§ 1105.4(f), 1105.6(a).

¹⁶ 40 C.F.R. § 1501.4(c); 49 C.F.R. §§ 1105.4(d), 1105.6(b).

¹⁷ 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. § 1105.6(c), (d).

¹⁸ 49 C.F.R. §§ 1105.6(c)(2)(i). If transaction-related changes in rail operations are projected to exceed the thresholds for review, then SEA, on behalf of the STB, would prepare either an EA or EIS, addressing the effects of the transaction on such issues as: freight rail operations safety, hazardous materials transport safety, passenger rail safety, emergency vehicle response, highway at-grade crossing delay, traffic and roadway systems, energy, air quality, noise, cultural resources, land use, natural resources, environmental justice, and how the transaction may contribute to cumulative effects.

Table 1
THE BOARD'S THRESHOLDS FOR ENVIRONMENTAL ANALYSIS

System Component	Noise	Air Quality Attainment ^a and Maintenance Areas	Air Quality Nonattainment ^b Areas
Rail Line Segments	Increase of 8 trains per day, or 100% increase in annual gross ton-miles		Increase of 3 trains per day, or 50% increase in annual gross ton-miles
Rail Yards	100% increase in carload activity per day		20% increase in carload activity per day
Intermodal Facilities	Increase of 50 trucks per day, or 10% increase in average daily traffic volumes on any affected road segment		

^a Air quality attainment areas are those where ambient air pollution levels meet National Ambient Air Quality Standards established to protect human health.

^b Air quality nonattainment areas are those where ambient air pollution levels fail to meet National Ambient Air Quality Standards established to protect human health.

Source: 49 C.F.R. § 1105.7(e)

On the other hand, control transactions that do exceed the thresholds in the Board's rules have enough potential for significant impacts to warrant further environmental documentation and the preparation of an EA (or a full EIS).¹⁹ Moreover, where properties 50 years old and older may be affected, a historic review may be required under the National Historic Preservation Act of 1966, as amended.²⁰

¹⁹ 49 C.F.R. §§ 1105.6(b)(4), 1105.7(e)(5)(i)(A).

²⁰ 16 U.S.C. § 470; see also 49 C.F.R. § 1105.8.

VI. APPLICABILITY TO THIS CASE

In the Application, KCS and Tex Mex state that the proposed transaction would have insignificant environmental effects and therefore does not require formal environmental review under NEPA and the Board's environmental rules. KCS and Tex Mex observe that the transaction is expected to result in only minimal changes in carrier operations, none of which would exceed the thresholds triggering environmental review established in the Board's environmental rules at 49 C.F.R. § 1105.7(e)(4) and (5). The Application includes information on the projected traffic changes and anticipated changes in yard activity affected by the proposed transaction. This information is found at pages 39 – 42 of the Application and is attached as Exhibit B here. Based on the information in the Application and Exhibit B herein, KCS and Tex Mex assert that the proposed transaction is exempt under 49 C.F.R. § 1105.6(c)(2)(i) from environmental review and exempt under 49 C.F.R. § 1105.8(b)(1) and (3) from review under the National Historic Preservation Act. In its Decision No. 2, served June 9, 2003, accepting the Application (a copy of which is attached as Appendix C) the Board indicated that the information provided by KCS and Tex Mex is sufficient to create a presumption that this transaction is categorically excluded from further environmental review.

However, the Board's SEA must independently determine whether KCS's and Tex Mex's transaction is appropriately categorically excluded. To assist SEA in determining whether there is a need for formal environmental review of this transaction, SEA requested KCS and Tex Mex to prepare this Environmental Appendix, which provides general information about the proposal, including maps (see Exhibit A) and analysis supporting the conclusion that this transaction does not warrant environmental documentation. SEA has reviewed this Environmental Appendix.

KCS and Tex Mex also have been working with the Federal Railroad Administration (“FRA”) to develop a detailed Safety Integration Plan (“SIP”), under joint FRA and STB regulations, explaining how the operational aspects of the proposed change in control would be implemented safely. The SIP describes the process by which KCS and Tex Mex would safely integrate the infrastructure, equipment, personnel, and operating practices of the different railroad companies, if the Board approves the proposed transaction. KCS and Tex Mex have submitted the proposed SIP to FRA and to the Board.

To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP, the Board, in its Decision No. 2, served June 9, 2003, directed KCS and Tex Mex to mail copies of the Environmental Appendix and SIP materials to appropriate agencies and other interested parties and to announce that the Board is providing a 30-day period for interested parties to submit comments by July 31, 2003, to SEA.²¹ In addition, the Board directed KCS and Tex Mex to publish notice in major newspapers in communities with populations more than 5,000 people, between Beaumont and Laredo, Texas, alerting the public that the Environmental Appendix and SIP are available, and how to obtain copies and submit comments.

The Board explained in Decision No. 2 that based on SEA’s consideration of all timely comments and SEA’s own independent review of all available environmental information, including the SIP, SEA will recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether this transaction is categorically excluded, or, alternatively, whether an EA or EIS should be prepared in this case.

²¹ Decision No. 2 also stated that the Environmental Appendix and SIP would be posted on the Board’s Web site (<http://www.stb.dot.gov>).

VII. KCS'S AND TEX MEX'S ANALYSIS

The information described below is KCS and Tex Mex's evaluation of the potential environmental impacts that could result from operational changes (i.e., increased activities over rail lines and rail yards) of the proposed KCS/Tex Mex transaction.

KCS and Tex Mex anticipate only minor changes in operations as a result of the proposed transaction. The Application states that "KCS handled 932,399 carloads in 2001, and that Tex Mex handled 97,173 carloads in 2001. KCS and Tex Mex explain that the common control proposed in this minor transaction would generate less than a 1 percent increase in KCS traffic and less than a 7 percent increase in Tex Mex traffic. Specifically, KCS and Tex Mex anticipate that, as a result of common control of KCSR and Tex Mex, approximately 6,313 carloads of traffic²² will be diverted to the combined KCS/Tex Mex system annually (by the end of the third year following the consummation of common control). As shown in the Operating Plan contained in the Application, and in the environmental data submitted with the Application and attached herein as Exhibit B, KCS and Tex Mex believe that the KCS/Tex Mex proposed transaction would not exceed the Board's thresholds for environmental analysis.²³ For example, KCS and Tex Mex assert that the proposed transaction would not lead to an increase of the number of trains operated because the proposed increase in traffic could be accommodated on existing trains.²⁴ Similarly, KCS's and Tex Mex's data indicates that the greatest transaction-

²² The proposed transaction is expected to increase the annual gross ton-miles on the Tex Mex (including trackage rights) by about 21.4 percent or approximately 600 million gross ton-miles. The KCS's annual gross ton-miles are expected to increase by 1.8 percent or approximately 789 million gross ton-miles annually.

²³ See 49 C.F.R. §1105.7(e)(4), (5), and Table 1 *supra*.

²⁴ The applicable threshold for environmental review under the Board's regulations for a non-attainment area is three trains a day on any segment of line and for an attainment area the threshold is eight trains per day on any segment of line.

related percentage increase in annual gross-ton miles would be 21.4% on the Tex Mex, which is well below the lowest 50% threshold for analysis under the Board's rules for non-attainment areas. In addition, as their data indicates, KCS and Tex Mex have not identified any rail yards that would exceed the thresholds under the STB's regulations for environmental review. Furthermore, KCS and Tex Mex have proposed no transaction-related rail line abandonments or new rail line construction. Finally, KCS and Tex Mex explain that because the proposed transaction will result in a relatively modest increase in activity on affected line segments and yards (and no expected increase in train movements are anticipated) the proposed transaction would not result in any potentially significant environmental impacts warranting review under the Board's environmental rules.

KCS and Tex Mex have calculated that approximately 328 carloads (or about 5%) of the total 6,313 carloads to be diverted are projected to be hazardous materials. KCS and Tex Mex believe that the environmental effects of the projected 5% diversion of the hazardous materials carloads would not be significant. KCS and Tex Mex anticipate that approximately 60 carloads of the 328 carloads would consist of traffic already moved by KCS and/or Tex Mex (on longer trains) and that more than half of the 328 carloads, or 178 carloads, are expected to be from traffic diverted from a UP-NS movement to a KCS/Tex Mex-NS movement. Furthermore, as discussed in the SIP, Exhibit D, KCS's new comprehensive MCS system increases KCS's ability to ensure safe handling of hazmat shipments. As the SIP explains, the MCS system will be expanded to Tex Mex in the Fall of 2003. For all these reasons, KCS and Tex Mex believe that the proposed transaction is exempt under STB regulations from requirements to prepare environmental documentation.

KCS and Tex Mex further indicate that the proposed transaction is exempt under STB regulations from historic review under the National Historic Preservation Act.²⁵ KCS and Tex Mex state that they intend to continue rail operations after KCS's consummation of control of Tex Mex, and that additional STB approval would be required to abandon any service. KCS and Tex Mex state that they have no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. Moreover, the common control by KCS of KCSR, Gateway Eastern and Tex Mex is not expected to substantially change the level of maintenance of railroad property. KCS and Tex Mex indicate that there are significant rehabilitation and improvement plans that would take place on the Tex Mex property if KCS obtains control authority. However, they believe that rehabilitation and improvement plans on Tex Mex are not subject to environmental review by the Board.

Finally, KCS and Tex Mex note that no environmental or historic report was required for the transaction under the Board's regulations.²⁶ As discussed above, KCS and Tex Mex included data in the Application and now in the Environmental Appendix (see Exhibit B), setting forth the projected changes in numbers of trains operated and in tonnage handled over KCS and Tex Mex, and changes in activity at affected rail yards. KCS and Tex Mex believe that the data provided will allow the Board to determine that the transaction would have no potentially significant environmental impacts, and that further environmental documentation is therefore not required.

²⁵ 49 C.F.R. §1105.8(b)(1), (3).

²⁶ See 49 C.F.R. §§1105.7, 1105.8.

VIII. SAFETY INTEGRATION PLAN

As noted above, KCS and Tex Mex have been working with the FRA to develop a SIP under joint FRA and STB regulations specifically addressing the process of safely combining KCS's and Tex Mex's systems, if the proposed transaction is approved. The SIP describes the process by which KCS and Tex Mex would safely integrate the infrastructure, equipment, personnel and operating practices of the different railroad companies, if the Board approved the proposed transaction. The SIP was developed pursuant to the STB's regulations found at 49 C.F.R. Part 1106 and FRA's regulations found at 49 C.F.R. Part 244. KCS and Tex Mex have submitted their proposed SIP to FRA and the Board, and, as the Board directed in its Decision No. 2 served June 9, 2003 (see Exhibit C), the Board is now seeking public review and comment on the proposed SIP, which is attached as Exhibit D.

The FRA and STB regulations establish an ongoing safety integration monitoring process that would apply if the KCS/Tex Mex transaction is approved. The process would continue until FRA advises the Board in writing that the integration of operations subject to the transaction has been safely completed.

IX. KCS'S AND TEX MEX'S PRELIMINARY CONCLUSION

For the reasons discussed above, KCS and Tex Mex maintain that, because the projected transaction-related operational changes would be modest, as shown above and in Exhibit B to this Environmental Appendix, the proposed transaction is subject to a categorical exclusion from environmental review under the STB's rules. KCS and Tex Mex believe that the proposed transaction would have no potentially significant environmental effects, that there should therefore be no need for further examination, and that there is no need for an historic review under the National Historic Preservation Act.

X. PUBLIC PARTICIPATION

To facilitate public review and comment on all aspects of the KCS/Tex Mex Environmental Appendix and the SIP, the Board's Decision No. 2 (attached as Exhibit C) directed KCS and Tex Mex to mail copies of the Environmental Appendix and SIP materials to appropriate government agencies and other interested parties, and to place notices in major newspapers delivered to potentially affected communities, to announce the availability of the KCS/Tex Mex Environmental Appendix and that the Board is providing a 30-day period for interested parties to submit comments by July 31, 2003, to SEA.

The Board's purpose in directing KCS and Tex Mex to distribute this Environmental Appendix to the public is to encourage public and agency involvement and consultation to gain input on any potentially significant environmental impacts related to the transaction so that the Board can assess public concerns and issues in determining whether further environmental analysis is necessary.

SEA encourages the public to participate in the environmental review of the proposed KCS/Tex Mex transaction by commenting on the KCS/Tex Mex Environmental Appendix, and the proposed SIP and related materials, during the 30-day comment period, which ends on July 31, 2003. SEA invites written comments on all aspects of the KCS/Tex Mex Environmental Appendix and whether there is any reason that this transaction could result in potentially significant environmental impacts warranting preparation of further environmental documentation. Comments may be submitted to the address below. The public may file comments on both the Environmental Appendix and the proposed SIP in one submittal.

The STB has posted the entire text of the Application, including the Operating Plan and Environmental Data, detailing the projected traffic changes and yard activity affected by the transaction, on the Board's Web site.

The Application may be viewed by going to <http://www.stb.dot.gov> and clicking on the box labeled "Filings." The Application is listed under May 14, 2003, and identified by Filing ID No. 207805 and Docket No. FD_34342_0. This Environmental Appendix, including the SIP, is also available on the Board's Web site.

When submitting comments, please provide one original and ten copies to:

Office of the Secretary
Case Control Unit
Finance Docket No. 34342
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Attention: Phillis Johnson-Ball
Environmental Project Manager
Environmental Filing

The Board cannot accept oral comments or comments submitted electronically by e-mail at this time. If you have questions, please contact Phillis Johnson-Ball of the Board's Section of Environmental Analysis at (202) 565-1530.

EXHIBIT A

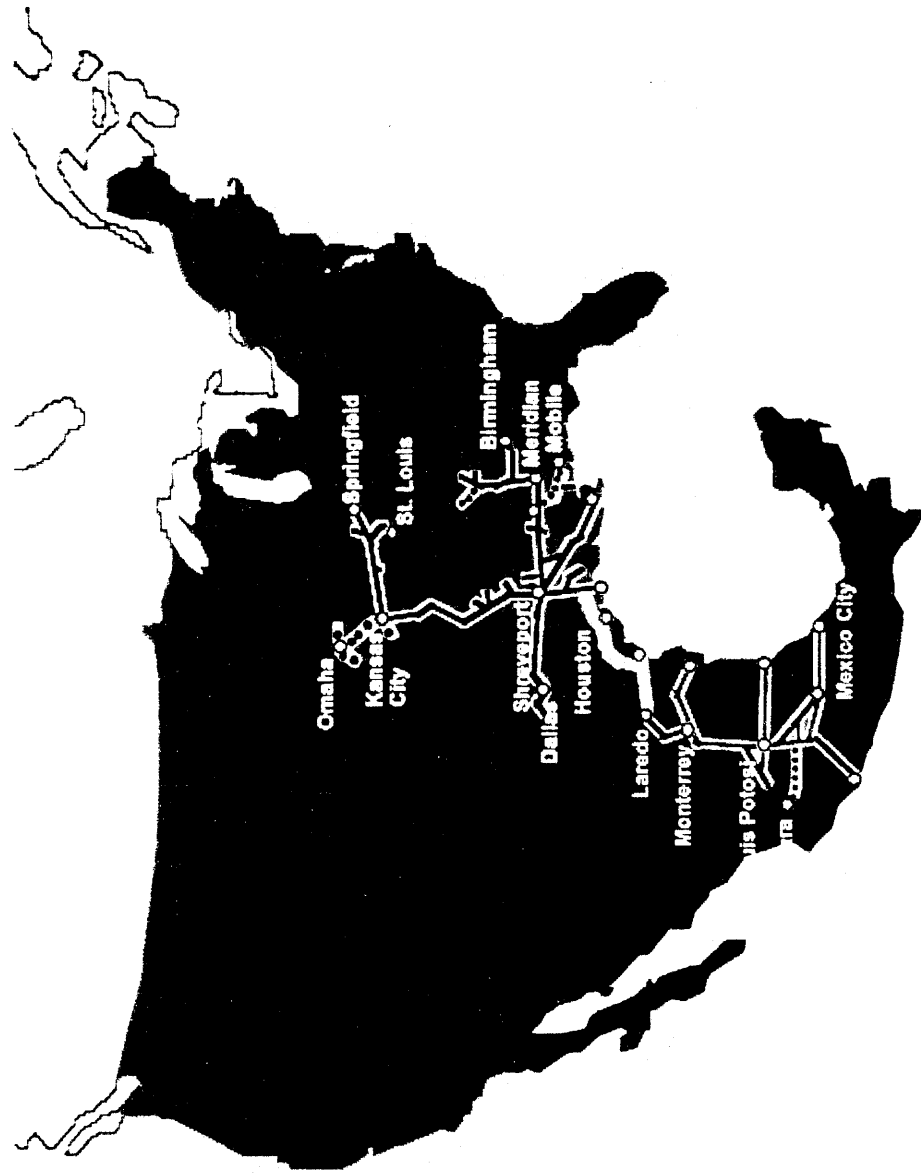
Maps

- A-1 KCSR, Tex Mex and TFM System**
- A-2 Tex Mex Main Line and Trackage Rights**

NAFTA
Rail



KCSR, Tex Mex, TFM Operating Under Common Control





The Texas Mexican Railway

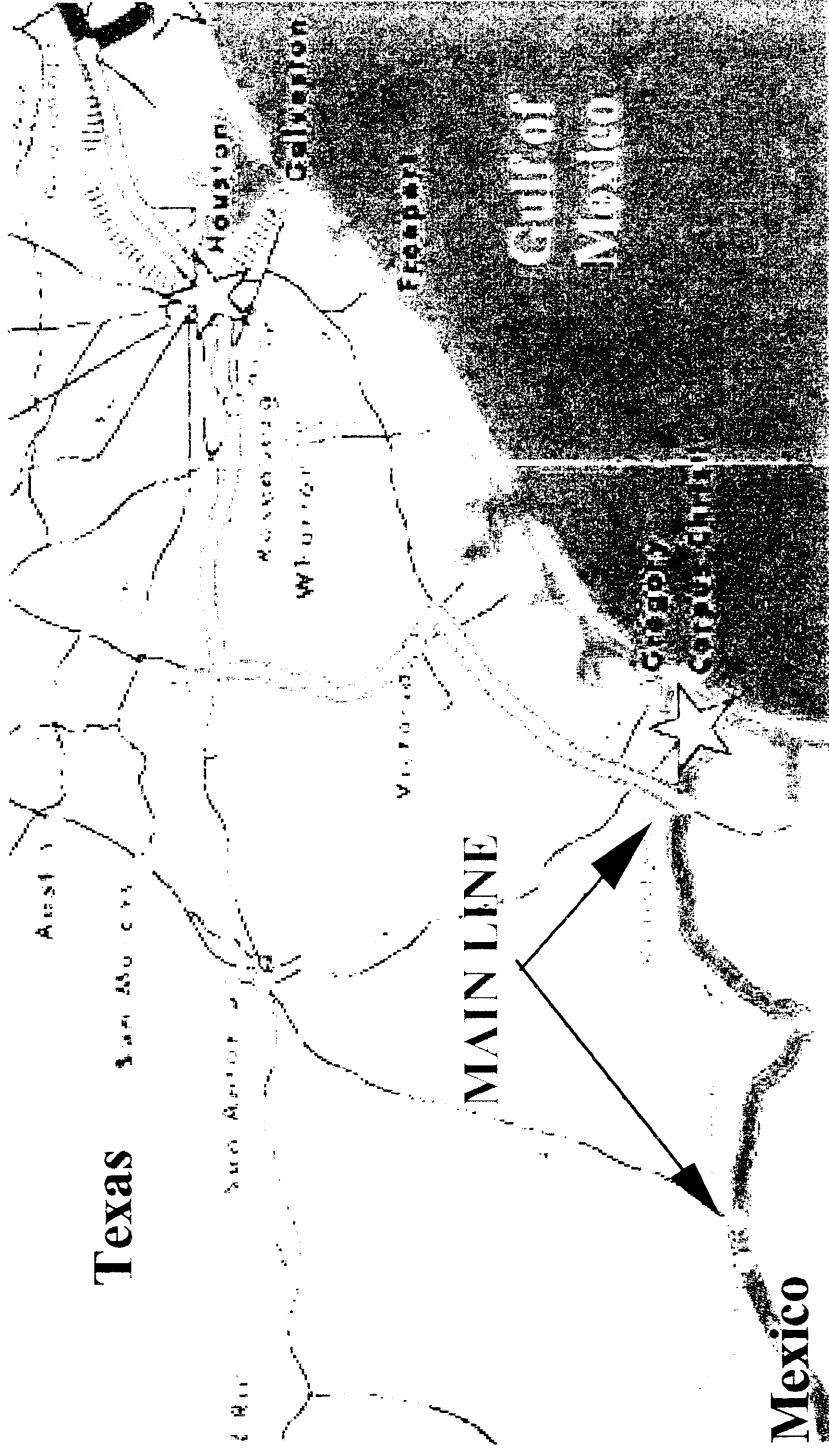


EXHIBIT B

Environmental Data

**(from pages 39 – 42 of the KCS
Railroad Control Application)**

SECTION 1180.6(a)(8)

ENVIRONMENTAL DATA

Under 49 C.F.R. § 1105.6(c)(2)(i), the proposed control transaction is exempt from environmental reporting requirements. The proposed transaction will not result in changes in carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

These thresholds are generally triggered if the transaction will result in either:

- (A) An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least 8 trains per day on any segment of rail line affected,
- (B) An increase in rail yard activity of at least 100% (measured by carload activity), or
- (C) An average increase of truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment.

The thresholds will also be triggered if the action affects a nonattainment area under the Clean Air Act and will result in either:

- (A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least 3 trains per day on any segment of rail line affected,
- (B) An increase in rail yard activity of at least 20% (measured by carload activity), or
- (C) An average increase of truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment.

The proposed transaction is expected to increase the annual gross ton-miles on the Tex Mex (including the trackage rights) by about 21.4% or approximately 600 million gross ton-miles. KCS's annual gross ton-miles are expected to increase by 1.8% or approximately 789 million gross ton-miles annually. *See* V.S. Mutén at 137. This expected increase is significantly below both the attainment and nonattainment thresholds. Furthermore, all of the

increased traffic resulting from the transaction can be accommodated on existing trains.

See V.S. Hefley at 166. Therefore, this transaction will not exceed either the attainment or nonattainment threshold in part (A) above.

KCSR handled 932,399 carloads in the year 2001. Tex Mex handled 91,173 carloads in 2001. The transaction is expected to divert an additional 6,313 carloads per year to the combined system or approximately 17 or 18 carloads per day across the entire KCSR-Tex Mex system. *See* Exhibit 15 - Operating Plan/Minor at 236. This is less than a 1% increase for KCSR traffic and less than a 7% increase for Tex Mex traffic. The rail yards that will be impacted by this transaction include the Kansas City yard in Kansas City, Missouri; the Bossier City yard in Shreveport, Louisiana; the Serrano yard in Laredo, Texas; and the Meridian yard in Meridian, Mississippi. None of these yards are in non-attainment areas. The Kansas City yard handles approximately 1,000 carloads per day. The Bossier City yard handles approximately 1,600 carloads per day. *See* Exhibit 15 - Operating Plan/Minor at 238. The Serrano yard handles approximately 430 carloads per day. *See* Exhibit 15 - Operating Plan/Minor at 240 n. 12. The Meridian yard handles approximately 300 carloads per day. *See* Exhibit 15 - Operating Plan/Minor at 239 n. 11. Even if all of the diverted traffic traveled into and was switched in each of these rail yards -- which is not the case -- the environmental threshold in rail yard activity would not be reached. The increase in traffic expected at any of these yards is clearly below the 100% increase threshold. Moreover, the transaction will not result in the increase of any truck traffic.

Finally, the common control of KCSR, Gateway Eastern, and Tex Mex through stock ownership will not substantially change the level of maintenance of railroad property, although there are significant rehabilitation and improvement plans that will take place on the Tex Mex

property if KCS obtains control authority. However, any rehabilitation and improvement plans on Tex Mex are not subject to environmental review by the Board. *See Burlington Northern Santa Fe Corporation, et al. - Control - Washington Central Railroad Company*, STB Finance Docket No. 32974 (STB served Oct. 25, 1996); *Union Pacific Railroad Company - Petition for Declaratory Order - Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Ogden Junction, TX*, STB Finance Docket No. 33611 (STB served Aug. 21, 1998); *Lee's Summit MO v. STB*, 231 F.3d 39, 42-43 at n.3 (D.C. Cir. 2000); and *Salt Lake City Corporation - Adverse Abandonment - in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (STB served March 8, 2002). As a result of the above information, which clearly supports finding that the proposed transaction will not result in changes in carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5), no environmental report accompanies this Application.

Under 49 C.F.R. § 1105.8(b)(1) and (3), the proposed transaction also is exempt from historic preservation reporting requirements. Rail operations will continue after KCS's consummation of common control of KCSR and Tex Mex, and further STB approval will be required to abandon any service. There are no plans to dispose of or alter properties subject to STB jurisdiction that are fifty years old or older. Accordingly, no historic report accompanies this Application.

In conclusion, this transaction is categorically excluded from analysis under the National Environmental Policy Act, 42 U.S.C. § 4332 and related laws because the action will have no significant effect on the human environment.

Under 49 C.F.R. Part 1106, KCS will also be filing a SIP which will explain the process by which KCS will integrate the remaining operations of KCSR and Tex Mex. KCS plans to file

the SIP thirty days after this Application is filed. Since this transaction is exempt from environmental review, KCS has proposed case-specific SIP procedures, as provided in 49 C.F.R. § 1106.4(c), in KCS's concurrently filed Petition for Procedural Schedule.

EXHIBIT C
STB Decision No. 2

33612
EB

SERVICE DATE - LATE RELEASE JUNE 9, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34342

KANSAS CITY SOUTHERN
— CONTROL —
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
AND
THE TEXAS MEXICAN RAILWAY COMPANY

Decision No. 2

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34342; Notice of Acceptance of Railroad Control Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the KCS-3/TM-3 railroad control application (referred to as the KCS/TM application) filed May 14, 2003, by Kansas City Southern (KCS), The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company (GWER), The Texas Mexican Railway Company (Tex Mex or TM), and Mexrail, Inc. (Mexrail).¹ The KCS/TM application seeks Board approval and authorization under 49 U.S.C. 11321-26 for KCS, which already controls KCSR and GWER, to acquire control of Tex Mex. The Board finds that the transaction proposed in the KCS/TM application is a “minor transaction” under 49 CFR 1180.2(c), although the applicants are subject to the expanded and enhanced requirements discussed herein.

The Board has considered applicants’ petition to establish a procedural schedule, also filed May 14, 2003. With a modification to reflect that the KCS/TM application was filed on

¹ KCS, KCSR, GWER, Tex Mex, and Mexrail are referred to collectively as “applicants.” The application does not list Mexrail as an applicant, but Mexrail clearly is a party to the transaction. Consistent with our practice, we will treat Mexrail as an applicant. See, e.g., Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 241 n.3 (1996); CSX Corp. et al. — Control — Conrail Inc. et al., 3 S.T.B. 196, 207 n.3 (1998).

May 14, 2003, and with further modifications principally intended to allow time for a public hearing and to allow interested parties additional time to file comments, the Board is adopting applicants' proposed procedural schedule, as modified. This will allow the Board to issue a decision 45 days after the close of the record and 24 days prior to the statutory deadline, assuming that no unanticipated environmental review is required and that no oral argument is held.

DATES: The effective date of this decision is **June 13, 2003**. Applicants must submit their Environmental Appendix and Safety Integration Plan (SIP) to the Board, and must supplement their application in the manner indicated below, by **June 23, 2003**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **June 27, 2003**, a notice of intent to participate. Applicants must distribute their Environmental Appendix and SIP to parties of record and other designated entities, and must initiate publication of newspaper notices, by **July 1, 2003**. A public hearing will be held in late **July 2003**; the precise date and the location will be announced later. All comments on applicants' Environmental Appendix and SIP must be filed by **July 31, 2003**. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **August 4, 2003**. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by **September 2, 2003**. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 34342 to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.² In addition, one copy of all documents in this proceeding must be sent to: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) William A. Mullins, Esq., TROUTMAN SANDERS LLP, 401 Ninth Street, N.W., Suite 1000, Washington, DC 20004-2134; and (4) Richard H. Streeter, Esq., BARNES & THORNBURG, 750 Seventeenth Street, N.W., Suite 900, Washington, DC 20006.

² For a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per the Board's requirements as discussed in detail in this decision.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The KCS/TM common control for which applicants seek approval in the KCS/TM application involves the acquisition by KCS of control of Tex Mex.

Kansas City Southern. KCS, a noncarrier holding company, currently controls two rail carriers: KCSR and GWER.

The Kansas City Southern Railway Company. KCSR, a Class I railroad,³ is a wholly owned direct subsidiary of KCS. KCSR owns and operates approximately 3,100 miles of main and branch lines in 10 midwestern and southern states (Kansas, Missouri, Illinois, Oklahoma, Arkansas, Tennessee, Texas, Louisiana, Mississippi, and Alabama). KCSR's principal routes extend from Kansas City, MO, via Shreveport, LA, to Beaumont/Port Arthur, TX, Lake Charles, LA, and New Orleans, LA. KCSR also has a route extending from Dallas, TX, via Shreveport, LA, to Meridian, MS, and a branch line route extending north out of Alexandria, LA, to Hope, AR. KCSR's major terminals are: Kansas City and St. Louis, MO; Shreveport, Lake Charles, Baton Rouge, and New Orleans, LA; Beaumont, Port Arthur, and Dallas, TX; and Vicksburg, Jackson, Meridian, and Gulfport, MS. KCSR also provides service, via haulage rights, over 1,200 miles of lines of other railroads, most prominently over lines of Union Pacific Railroad Company (UP) between Springfield and Chicago, IL, between Omaha, NE/Council Bluffs, IA, Lincoln, NE, Topeka and Atchison, KS, and Kansas City, MO, and between

³ The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of \$250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than \$20 million but less than \$250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of \$20 million or less (in 1991 dollars). See 49 CFR Part 1201, General Instruction 1-1(a).

Beaumont and Houston/Galveston, TX, and over lines of The Burlington Northern and Santa Fe Railway Company (BNSF) between Kansas City, MO, and Council Bluffs, IA. KCSR also owns a non-controlling 16.6% interest in the Kansas City Terminal Railway Company and a non-controlling 50% interest in the Kansas City Joint Agency, both of which are located in Kansas City, MO.

Gateway Eastern Railway Company. GWER, a Class III railroad, is a wholly owned direct subsidiary of KCSR. GWER owns and operates approximately 17 miles of rail lines between East Alton, IL, and East St. Louis, IL. GWER also operates via trackage rights over 5 miles of Terminal Railroad Association of St. Louis track between WR Tower and Willows Tower, IL, and over 11.07 miles of The Alton and Southern Railway Company track between Lenox Tower and Rose Lake, IL. See KCS-3 at 217. GWER is primarily engaged in industrial switching in the Alton and Wood River, IL areas.

The Texas Mexican Railway Company. Tex Mex, a Class II railroad, is a wholly owned direct subsidiary of Mexrail. Tex Mex owns and operates 157 miles of rail line between Laredo and Corpus Christi, TX. Pursuant to a 1996 Board order, see Union Pacific/Southern Pacific Merger, 1 S.T.B. at 421-26, Tex Mex also operates via trackage rights over approximately 379 miles of UP lines between Robstown and Beaumont, TX, via Placedo, Victoria, Flatonia, Rosenberg, and Houston, TX. Tex Mex interchanges with KCSR at Beaumont, TX; with The Houston Belt & Terminal Railway Company and The Port Terminal Railway Association at Houston, TX; with BNSF at Corpus Christi, Houston, and Robstown, TX; with UP at Corpus Christi, Houston, Laredo, Robstown, and Victoria, TX; and with TFM, S.A. de C.V. (TFM), on the International Rail Bridge that spans the Rio Grande River between Laredo, TX, and Nuevo Laredo, Tamaulipas, Mexico.⁴

Mexrail. Prior to May 9, 2003, Mexrail, a noncarrier, was a wholly owned direct subsidiary of TFM. Mexrail owns two assets: (1) 100% of the shares of Tex Mex; and (2) 100% of the U.S. portion of the bridge structure (but not the track, which is owned by Tex Mex, see KCS-3 at 220) of the International Rail Bridge that runs between Laredo (on the U.S. side of the border) and Nuevo Laredo (on the Mexican side of the border).⁵

⁴ Over 50% of all rail freight interchanged between the U.S. and Mexico passes over the International Rail Bridge at Laredo.

⁵ Applicants advise that Mexrail has been treated as a noncarrier since its creation, and that they are aware of only one instance in which there has ever been even so much as a suggestion that Mexrail is a carrier. The one instance they cite, see KCS-3 at 19 n.12, was a “passing statement” by the Board that “Mexrail is a carrier.” See Mexrail, Inc. v. Union Pacific Railroad Company and Missouri Pacific Railroad Company, STB Finance Docket No. 32980 (Mexrail) (STB served July 13, 2000), slip op. at 5 n.9 (whereas Tex Mex owns the track on the

TFM. TFM, a railroad located entirely in Mexico, operates from Nuevo Laredo south to Monterrey, San Luis Potosi, Querataro, and Mexico City, and, from the Querataro-Mexico City area, west to Lazero Cardenas and east to Veracruz. TFM owns no U.S. property and does not operate in the U.S.⁶ (1) TFM, which (prior to May 9, 2003) held a 100% ownership interest in Mexrail, is owned by Grupo Transportación Ferroviaria Mexicana, S.A. de C.V. (Grupo TFM, which owns an 80% interest in TFM) and the Mexican Federal Government (which owns a 20% interest in TFM).⁷ (2) Grupo TFM is owned by NAFTA Rail, S.A. de C.V. (“NAFTA Rail #1,” which owns a 36.9% interest in Grupo TFM), TMM Multimodal (which owns a 38.5% interest in Grupo TFM), and TFM (which holds a 24.6% interest, with limited voting rights, in Grupo TFM, its 80% parent). (3) NAFTA Rail #1 is a wholly owned indirect subsidiary of KCS.⁸ (4) TMM Multimodal is a 96.3%-owned direct

U.S. half of the bridge, Mexrail owns the underlying “superstructure” of the bridge). Under these circumstances, applicants are justified in treating Mexrail as a noncarrier (and they are therefore justified in not seeking authority for KCS to control Mexrail).

⁶ TFM connects, on the International Rail Bridge that runs between Laredo and Nuevo Laredo, with two U.S. railroads: Tex Mex and UP. Traffic is interchanged, at the middle of the Bridge, between TFM, on the Mexican side, and Tex Mex and UP, on the U.S. side. See KCS-3 at 221.

⁷ Applicants have advised that Grupo TFM’s owners are under an obligation to acquire the Mexican Government’s 20% interest in TFM in 2003 unless the Mexican Government “prior to that date sells shares in a public offering.” KCS-3 at 12 n.4.

⁸ Two points respecting the indirect interest that KCS holds in Grupo TFM are addressed in this footnote. (1) Applicants have indicated that NAFTA Rail #1 is a wholly owned indirect subsidiary not only of KCS but also of KCSR, which (as has already been noted) is itself a wholly owned direct subsidiary of KCS. See KCS-3 at 13. If NAFTA Rail #1 were owned by KCS in a single corporate chain that ran through KCSR, NAFTA Rail #1 would indeed be a wholly owned indirect subsidiary of both KCS and KCSR. Applicants have also indicated, however, that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR. See KCS-3 at 13. The two claims (the claim that NAFTA Rail #1 is a wholly owned indirect subsidiary of KCSR, and the claim that NAFTA Rail #1 is owned by KCS via two corporate chains, only one of which runs through KCSR) cannot both be true. (2) Applicants have indicated that KCS currently owns “an approximate 47% stake” in Grupo TFM. See KCS-3 at 12. See also KCS-3 at 55 n.1 (applicants indicate that Grupo TFM is “effectively owned” 46.5% by KCS) and KCS-3 at 73 (applicants indicate that KCS has “an economic interest” in Grupo TFM of approximately 46.5%). It is not clear how this calculation was derived. It may, perhaps, have been derived by dividing 36.9% (the interest in Grupo TFM held by KCS through intermediaries) by the sum of 36.9% and 38.5% (the interests in

subsidiary of TMM Holdings, S.A. de C.V., which is itself a wholly owned direct subsidiary of Grupo TMM, S.A. (Grupo TMM, a noncarrier).⁹

Two Transactions: KCS/TM and KCS/TFM. On April 21, 2003, KCS and Grupo TMM announced a series of agreements that contemplate two “separate” transactions, which are referred to as the KCS/TM transaction (this transaction contemplates the acquisition, by KCS, of control of Tex Mex) and the KCS/TFM transaction (this transaction contemplates the acquisition, by KCS, of control of TFM). Neither of these two transactions is contingent upon the other. The KCS/TM transaction has been submitted to the Board for regulatory approval, and is the subject of this decision. The KCS/TFM transaction has not been, and will not be, submitted to the Board for regulatory approval. If these two transactions are consummated, KCS — which, as part of the KCS/TFM transaction, will change its name to “NAFTA Rail” (referred to as NAFTA Rail #2)¹⁰ — will control, directly or through one or more corporate intermediaries, four railroads (KCSR, GWER, Tex Mex, and TFM), all of which will be operated as separate subsidiaries under common control.

The KCS/TM Transaction; Purchase Price; Voting Trust. One of the agreements announced on April 21, 2003 (referred to as the KCS/TM Stock Purchase Agreement) contemplated the acquisition by KCS, from TFM, of 51% of TFM’s 100% interest in Mexrail, in exchange for approximately \$32.7 million in cash. On May 9, 2003, KCS consummated the acquisition (the purchase price was apparently paid on May 9th) and acquired a 51% interest in Mexrail.¹¹ KCS advises that, to avoid any violation of 49 U.S.C. 11323 *et seq.*, it immediately

Grupo TFM not held by Grupo TFM’s 80%-owned subsidiary), which would yield approximately 48.9%.

⁹ Although applicants generally refer to Grupo TMM, S.A., as “TMM,” *see* KCS-3 at 8, this decision refers to Grupo TMM, S.A., as “Grupo TMM,” to avoid confusion (by using a consistent naming practice that reflects the fact that each “Grupo” entity sits at the top of its respective corporate chain, *see* KCS-3 at 13).

¹⁰ The new “NAFTA Rail” (i.e., the renamed Kansas City Southern referred to as NAFTA Rail #2) should be distinguished from the old “NAFTA Rail” (“NAFTA Rail, S.A. de C.V.,” the wholly owned indirect subsidiary of KCS that is referred to as NAFTA Rail #1).

¹¹ Although KCS has already purchased 51% of TFM’s 100% interest in Mexrail, KCS also has a call on the remaining 49% of TFM’s 100% interest in Mexrail. This call apparently allows KCS to purchase the remaining 49% interest. *See* KCS-3 at 14.

placed the shares of Mexrail and Tex Mex (i.e., KCS's 51% interest in Mexrail, and Mexrail's 100% interest in Tex Mex), see KCS-3 at 19 n.12, into an independent irrevocable voting trust that was established pursuant to an agreement (referred to as the KCS/TM Voting Trust Agreement) that, KCS claims, is consistent with 49 CFR part 1013. KCS advises that, if and when the Board approves the acquisition by KCS of control of Tex Mex, the voting trust will be dissolved, KCS will take full ownership of its 51% interest in Mexrail, and Mexrail will reassume full ownership of its 100% interest in Tex Mex.¹²

The KCS/TFM Transaction; Purchase Price; Several Contingencies. Two or more of the agreements announced on April 21, 2003, contemplate the acquisition by KCS of control of TFM. The KCS/TFM transaction envisioned by these agreements contemplates that Kansas City Southern will be renamed "NAFTA Rail" (referred to as NAFTA Rail #2); that NAFTA Rail #2 will acquire TMM Multimodal's 38.5% interest in Grupo TFM, which, when combined with NAFTA Rail #2's (i.e., KCS's) present 36.9% interest, will give NAFTA Rail #2 a controlling interest in Grupo TFM, and, therefore, a controlling interest in TFM;¹³ and that TMM Multimodal will receive 18 million shares of NAFTA Rail #2 representing an approximately 22% (20% voting, 2% subject to voting restrictions) interest in NAFTA Rail #2, plus \$200 million in cash and a potential incentive payment of between \$100 million and \$180 million based on the resolution of certain contingencies.¹⁴ The KCS/TFM transaction, including the change of name from Kansas City Southern to NAFTA Rail, is contingent upon obtaining adequate financing, the approval of the shareholders of KCS, the approval of the shareholders of Grupo TMM, the Hart-Scott-Rodino process at the U.S. Department of Justice (DOJ), the approval of the Mexican Competition Commission, and the approval of the Mexican Foreign Investment Commission.¹⁵

¹² The KCS/TM transaction (i.e., the acquisition, by KCS, of a 51% interest in Tex Mex) is subject to the jurisdiction of the Board under § 11323(a)(5) ("Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.").

¹³ The KCS/TM application does not appear to state explicitly that NAFTA Rail #2 will acquire all of TMM Multimodal's 38.5% interest in Grupo TFM. The context, however, suggests that NAFTA Rail #2 will indeed acquire all of TMM Multimodal's 38.5% interest.

¹⁴ Applicants indicate that the contingencies mainly involve a value added tax dispute in Mexico. See KCS-3 at 54.

¹⁵ Although § 11323(a)(5) ("Acquisition of control of a rail carrier [TFM] by a person that is not a rail carrier [KCS] but that controls any number of rail carriers [KCSR and GWER, and, after the termination of the voting trust, Tex Mex]") might suggest the applicability of this provision to acquisition of control of TFM by KCS, this provision is not applicable in this

The KCS/TM Transaction: Public Interest Considerations. Applicants contend that bringing the KCSR/GWER and Tex Mex systems under common control represents one more step in KCS's efforts to develop a "NAFTA Railroad" that will connect Canada, the U.S., and Mexico and provide seamless, efficient, and competitive rail service in all of North America.¹⁶ Common control of KCSR/GWER and Tex Mex, applicants argue, will provide more efficient routing and service options to shippers; it will make possible better coordination of marketing, improved customer service, and improved single-line service; it will allow KCSR/GWER and Tex Mex to reduce expenses and rationalize operations; it will make possible full integration of KCS's Management Control System (MCS),¹⁷ improved freight car utilization, improved performance of the locomotive fleet, reduced time-keeping and payroll-processing costs, and consolidation of general and administrative functions; it will provide financial stability to Tex Mex, which (applicants note) has from time to time in recent years found itself hard pressed to keep pace with the increasing traffic volumes available; and, finally, it will help position KCSR to remain a competitive, independent, and viable carrier. Applicants argue that the combined KCSR/GWER-Tex Mex system will be stronger, financially and operationally, than either system could be separately. Applicants assert that they will be in a better position to provide an effective competitive alternative at Laredo, and better able to compete with other railroads, motor carriers, and barges in providing effective and efficient service to the shipping public.¹⁸

context because the Board has no jurisdiction over the acquisition of control of a rail carrier — like TFM — that is located entirely outside the United States. Similarly, although § 11323(a)(4) ("Acquisition of control of at least 2 rail carriers [KCSR, GWER, and, after the termination of the voting trust, Tex Mex] by a person that is not a rail carrier [Grupo TMM]") might conceivably be applicable to the acquisition of a 20% (or 22%) interest in KCS by Grupo TMM, it has long been understood that acquisition of control by a noncarrier of any number of carriers operating as a "single established system" is not subject to § 11323(a)(4). Fox Valley & Western Ltd. — Exempt., Acq. and Oper., 9 I.C.C.2d 209, 217-18 (1992) (citing cases).

¹⁶ The North American Free Trade Agreement is referred to as NAFTA.

¹⁷ MCS is a computerized shipment and billing management system.

¹⁸ Applicants anticipate that, as a result of common control of KCSR/GWER and Tex Mex, approximately 6,313 carloads of traffic will be diverted to the combined KCSR/GWER-Tex Mex system annually (by the end of the third year following the consummation of common control), generating additional annual revenues of approximately \$14.3 million. Applicants predict that much of the diverted traffic will be interchanged with eastern carriers CSX Transportation, Inc. and Norfolk Southern Railway Company (NS). See KCS-3 at 221. Applicants further anticipate that common control will result in net operating-expense savings of approximately \$3.3 million annually.

Applicants further contend that common control of KCSR/GWER and Tex Mex will not result in any loss of competitive rail options for any shipper or any receiver. There are, applicants argue, no shippers or receivers receiving rail service from KCSR/GWER and Tex Mex for which common control would reduce the number of independent railroads serving them from three to two or from two to one. Applicants advise that KCSR/GWER and Tex Mex share only one common connection (at Beaumont, TX). The KCS/TM transaction, applicants maintain, involves an end-to-end connection whereby two carriers that already share common ownership and operating practices will finally be combined under a unified management team. Applicants contend that common control of KCSR/GWER and Tex Mex will not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. And, applicants add, in view of the fact that the KCS/TM transaction occurs in a market in which motor carriers are the dominant mode of transportation, this transaction cannot have an adverse impact on competition.¹⁹

Applicants also contend that the KCS/TM transaction is not anticompetitive because it does not call for cancellation of any cooperative agreements with other carriers. These agreements include a 1997 NS-KCSR-Tex Mex marketing agreement (renewed in 2000 for 3 years) for traffic moving into Texas and Mexico, the KCSR-CN/IC Alliance,²⁰ and a 2002 BNSF-KCSR marketing agreement. Applicants add that these agreements provide valuable carloads to the KCSR and Tex Mex systems and form the backbone of the competitive alternative currently provided by KCSR and Tex Mex for NAFTA traffic. They further contend that, because of these agreements, shippers have a choice and do not have to depend solely upon UP or the trucking industry for shipment of their NAFTA traffic. Applicants state that, to improve Tex Mex's financial stability, KCSR intends to work with all of its connecting carriers

¹⁹ Applicants also maintain that KCSR/GWER-Tex Mex common control will not adversely impact the essential services provided by any rail carrier. Applicants estimate that common control will result in losses of 4,123 cars a year to UP (allegedly representing 1.7% of all cars delivered or picked up by UP at Laredo, TX) and 1,692 cars a year to BNSF (allegedly representing 17% of all cars delivered or picked up by BNSF at Brownsville, TX). See KCS-3 at 122.

²⁰ Canadian National Railway Company is referred to as CN. Illinois Central Railroad Company is referred to as IC.

to increase the amount of traffic flowing over Tex Mex. Applicants acknowledge that, although they will honor all Tex Mex agreements pursuant to the terms, any agreement that does not provide adequate revenues will be reviewed, and, upon expiration, will be renegotiated or not renewed. See KCS-3 at 60 n.3.

Labor Protection. Applicants acknowledge that the applicable level of labor protection for the proposed KCS/TM transaction is that set forth in New York Dock Ry. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979). Applicants state that the existing collective bargaining agreements for KCSR and Tex Mex will remain in force. They explain that the implementation of KCSR's MCS on Tex Mex will result in the elimination of a limited number of employee positions and that other anticipated operating economies will result in the elimination of a limited number of positions in marketing management, time-keeping and payroll processing, and a limited number of positions involved with car and locomotive pool. The applicants further acknowledge the possibility that significant changes may occur as they gain experience in the course of implementing common control of KCS and TM. See KCS-3 at 158.

KCS/TM APPLICATION ACCEPTED. The Board agrees with applicants that the KCS/TM common control transaction may be considered as a “minor transaction” under 49 CFR 1180.2(c), and the Board accepts the KCS/TM application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180.²¹

But while the KCS/TM transaction may be designated as “minor” from a regulatory standpoint, the broader transaction, incorporating the related KCS/TFM component, could be very significant. Indeed, if the KCS/TFM transaction were subject to the jurisdiction of the Board — which it is not — it would be categorized as a “major” transaction because TFM's size would make it a Class I railroad if it were in the U.S. Moreover, the significance of the role played by TFM in the U.S.-Mexico NAFTA corridor cannot be ignored.

Thus, UP has asked that applicants nevertheless be required to supplement their application to address the implications of the KCS/TFM transaction on the KCS/TM transaction (UP-1 pleading, filed May 27, 2003).²² UP expressed concern that TFM will not remain an independent and neutral connection at Laredo. UP argues that the KCS/TFM transaction must be

²¹ The Board reserves the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

²² UP's request that applicants be required to supplement the KCS/TM application has been endorsed by E.I. du Pont de Nemours and Company (DuPont) in a pleading filed June 2, 2003. BNSF has also requested supplementation. See BNSF-1 (filed June 3, 2003) at 2-10.

evaluated on a record that includes the effect of the KCS/TFM transaction on the KCS/TM transaction and on competition within the U.S.

Notwithstanding that the two transactions nominally are separate and independent of each other, in reality they are two components of a single, larger transaction with broader potential implications in the U.S. Thus, as UP has pointed out, the Board should be prepared to address these effects. Accordingly, the Board will require that, by **June 23, 2003**, applicants must supplement the KCS/TM application to reflect the implications of the broader transaction for competition within the U.S. In particular, applicants should submit the information specified in 49 CFR 1180.1(k)(1) and 1180.11. Because the applicants likely have already prepared much, if not all, of this information for other purposes or after receiving UP's filing, they should be able to submit the necessary supplemental information by that date.²³

PUBLIC INSPECTION. The KCS/TM application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, D.C. In addition, it may be obtained from applicants' representatives (Mr. Mullins, for KCS, KCSR, and GWER; Mr. Streeter, for Tex Mex and Mexrail) at the addresses indicated above.

PROCEDURAL SCHEDULE. Applicants have indicated that they would like to release Tex Mex from the voting trust as soon as possible. They have therefore proposed a 128-day procedural schedule that provides for issuance of a decision by the Board on September 19, 2003, with an effective date of September 24, 2003.²⁴

²³ Should applicants need additional time to prepare the necessary supplemental information, they may request appropriate revisions to this schedule.

²⁴ Applicants contend that, because Tex Mex is now operating under a voting trust arrangement, the KCS/TM application should be approved and made effective on as expeditious a schedule as is possible.

The Board is adopting a 156-day procedural schedule²⁵ that, although 28 days longer than applicants suggest, still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) established by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2).²⁶ Applicants' suggested procedural schedule for this transaction would be shorter than others of its scope. The schedule announced today is consistent with the schedule for similar prior transactions. Applicants must submit their Environmental Appendix and Safety Integration Plan (SIP) to the Board, and supplement the KCS/TM application to reflect the implications, for KCS/TM common control, of KCS/TFM common control, by **June 23, 2003**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **June 27, 2003**, a notice of intent to participate. Applicants must distribute their Environmental Appendix and SIP to parties of record and other designated entities, and must initiate publication of newspaper notices, by **July 1, 2003**. A public hearing will be held in **July 2003** (the precise date and the location will be announced later). All comments on applicants' Environmental Appendix and SIP must be filed by **July 31, 2003**. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **August 4, 2003**.²⁷ Responses to

²⁵ The schedule adopted here is similar, in key respects, to the schedule proposed by UP (in its UP-1 pleading, filed May 27, 2003), which is endorsed by DuPont (in its pleading filed June 2, 2003). Likewise, the schedule is also similar to that proposed by The National Industrial Transportation League (in its NITL-2 pleading, filed June 3, 2003). The adopted schedule should afford all non-applicant parties sufficient time to seek discovery regarding all relevant impacts of the Tex Mex transaction and to prepare and submit comments on the impacts of the transactions as requested by CN (in its CN-2 pleading, filed June 3, 2003). The Board realizes that, although the adopted schedule does not give non-applicant parties the 45 days one of them seeks for filing comments after the applicants' submission of supplemental information (see BNSF-1 at 13, filed June 3, 2003), in affording them 42 days, it has essentially accommodated that request.

²⁶ The Board expects that applicants have adhered to their promise to provide copies of the KCS/TM application to certain parties that had previously requested copies of the application and to all parties required by regulation. The Board further expects that applicants have also adhered (and will continue to adhere) to their promise to provide, promptly upon request, copies of the KCS/TM application to any other party. The Board understands that applicants' promises rest on the assumption that the parties requesting the KCS/TM application have complied with the protective order granted in Decision No. 1 (served May 13, 2003). See applicants' procedural schedule petition at 6 n.3.

²⁷ DOT, in its DOT-1 pleading (filed June 2, 2003), has asked that the procedural schedule be modified to accommodate its past practice of filing comments not only in response

comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by **September 2, 2003**. The Board's decision will be issued on **October 17, 2003** (the 156th day after the date on which the KCS/TM application was filed, and the 45th day after the close of the record). If, however, it is determined that an Environmental Assessment or Environmental Impact Statement is required, the procedural schedule will be adjusted as necessary. Also, if an oral argument is held, the Board's decision will be issued no later than the 45th day after the date on which the oral argument is held.²⁸

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **June 27, 2003**, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

The Board will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

to the application itself but also in response to the comments filed by other parties. As in past proceedings, DOT will be allowed to file its comments in response to other parties' comments on the reply due date (here, September 2, 2003). Applicants will be allowed to late-file (as quickly as possible) a reply to DOT's responsive comments. In this manner, the procedural schedule will not be extended unnecessarily.

²⁸ If the Board ultimately approves the KCS/TM application, consideration will be given to applicants' request that the decision take effect on the 5th day (and not, as is customary, the 30th day) after the date of service.

The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, D_2 D_ Legal Copy Service, to receive copies of Board decisions, orders, and notices served in this proceeding. D_2 D_ Legal Copy Service will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for D_2 D_ Legal Copy Service is (202) 293-7776.²⁹

PUBLIC HEARING. A hearing at which members of the public may voice their views regarding the KCS/TM transaction will be held in **July 2003**. The precise date and location of the public hearing will be announced later. A public hearing is somewhat informal and the views expressed are not expected to be "legal" arguments. On the other hand, an oral argument is more formal and the lawyers representing the parties in a proceeding are expected to express "legal" views regarding any matters that are in dispute. It is possible that an oral argument may be held in this proceeding at a later date.

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings by DOJ and DOT, must be filed by **August 4, 2003**.

Parties (including DOJ and DOT) filing such comments, etc., must submit an original and 25 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; must refer to STB Finance Docket No. 34342; and must be clearly labeled with an identification acronym and number (e.g., the KCS/TM application was labeled "KCS-3"), see 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

²⁹ An interested person does not need to be on the service list to obtain a copy of the KCS/TM application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." 49 CFR 1180.4(a)(3). The KCS/TM application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "Filings." Furthermore, D_2 D_ Legal Copy Service will provide, for a charge, copies of the KCS/TM application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

Comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, applicants' representatives, and all other PORs, and should include the docket number and title of the proceeding, and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

Because the KCS/TM common control transaction proposed in the KCS/TM application has been determined to be a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the KCS/TM application or the imposition of conditions upon any approval, on the theory that approval (or approval without imposition of conditions) will harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir. 1983).

RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION, INCLUDING DOJ AND DOT; REBUTTAL IN SUPPORT OF KCS/TM APPLICATION. Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal in support of the KCS/TM application must be filed by **September 2, 2003**.

ENVIRONMENTAL MATTERS. Applicants assert in their application that the proposed KCS/TM transaction will have insignificant environmental effects and therefore does not require a formal environmental review under the National Environmental Policy Act of 1969 (NEPA). Applicants state that the transaction will not result in changes in carrier operations that would exceed the thresholds triggering environmental review established in the Board's environmental rules at 49 CFR 1105.7(e)(4) or (5).³⁰ Applicants further state that, under 49 CFR 1105.8(b)(1) and (3), the transaction is exempt from historic preservation reporting requirements because rail operations will continue after consummation of common control, further Board approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Finally,

³⁰ Applicants explain that KCS/TM common control will generate less than a 1% increase in KCSR traffic and less than a 7% increase in Tex Mex traffic. Applicants add that, although there are significant rehabilitation and improvement plans that will take place on Tex Mex property if KCS obtains control authority, such improvements do not require Board approval or environmental review under NEPA. See KCS-3 at 41.

applicants explain that the transaction is subject to a “categorical exclusion” from environmental analysis under NEPA and the Board’s environmental rules.³¹

The information set forth in the application is sufficient to create a presumption that this transaction is covered by a categorical exclusion. However, the Board’s Section of Environmental Analysis (SEA) must independently determine whether applicants’ transaction is appropriately exempt from NEPA. To assist SEA in determining whether formal environmental review of the transaction is necessary, the Board has directed applicants to prepare an Environmental Appendix providing additional details and explanation, including maps, supporting applicants’ conclusion that this transaction does not warrant environmental documentation. Applicants shall submit the Environmental Appendix to SEA by **June 23, 2003**.

Applicants also have been working with the Federal Railroad Administration (FRA) to develop a Safety Integration Plan (SIP), pursuant to the joint regulations adopted by FRA and the Board to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA. See 49 CFR Parts 244 and 1106. The SIP will specifically address the process of safely combining applicants’ systems, if the proposed transaction is approved. Applicants shall submit their SIP to SEA by **June 23, 2003**.

To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP, applicants must, by **July 1, 2003**, distribute the Environmental Appendix and the SIP to all parties of record and to appropriate agencies (consisting of the regional offices of the U.S. Environmental Protection Agency and the Governor’s Office and state equivalent of EPA in each state in which KCS owns track). Applicants must also, by **July 1, 2003**, publish a notice in major newspapers in communities between Beaumont, TX, and Laredo, TX, with populations more than 5,000 people, alerting the public that the Environmental Appendix and SIP are available and explaining how to obtain copies and submit comments. Interested parties will have 30 days — until **July 31, 2003** — to submit comments on the Environmental Appendix and the

³¹ Under the regulations of the President’s Council on Environmental Quality implementing NEPA and the Board’s environmental regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the agency to prepare a full Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the agency to prepare a more limited Environmental Assessment (EA). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. Such activities are said to be covered by a categorical exclusion. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c).

SIP to SEA. Applicants shall certify that they have met these distribution and newspaper notice requirements. The Board will further ensure broad access to the Environmental Appendix and the SIP by making them available on the Board's website at "www.stb.dot.gov."

As discussed above, the information provided by applicants is sufficient to create a presumption that this action does not require formal environmental review. Accordingly, comments challenging the presumption that this matter is categorically excluded from NEPA must demonstrate with specificity why an EA or EIS appears to be warranted in this case.

Based on its consideration of all timely comments and its own independent review of all available environmental information, including the SIP, SEA will then recommend to the Board whether there is a need for formal environmental review in this case. The Board will then determine whether this transaction is categorically excluded from NEPA or, alternatively, whether an EA or an EIS should be prepared. If it appears that an EA or an EIS is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly. Even if no EA or EIS is warranted, the Board intends to include in any decision approving the KCS/TM transaction a condition requiring applicants to comply with their SIP. See 49 CFR 1106.4(b)(4).

DISCOVERY. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

ELECTRONIC SUBMISSIONS: IN GENERAL. As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence.³² Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served May 13, 2003), and will be for the exclusive use of Board employees

³² Parties unable to comply with the electronic submission requirement can seek a waiver from the Board.

reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff.³³

ELECTRONIC SUBMISSIONS: WORKPAPERS, DATA BASES, AND SPREADSHEETS. In the past, the Board has encountered problems with the “links” in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board’s computers.³⁴ Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.³⁵ The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for the Board to accept the data base in another format.

EXCESSIVE USE OF CONFIDENTIALITY DESIGNATIONS. Applicants have included, in their KCS-3 application, copies of the KCS/TM Stock Purchase Agreement and the KCS/TM Voting Trust Agreement. See KCS-3 at 160-91 and 192-209, respectively. Initially, however, neither agreement was included in the “Public Version” of the KCS-3 application because, initially, each agreement was designated “Highly Confidential” in its entirety.³⁶ Subsequently, applicants filed a “Public Version” of the KCS/TM Stock Purchase Agreement,

³³ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board’s regulations.

³⁴ The Board will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with the Board’s computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565-1550.

³⁵ ODBC is a Windows technology that allows a data base software package, such as Microsoft Access, to import data from a data base created using a different software package. All data bases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

³⁶ Although there is one indication in the KCS-3 application that the KCS/TM Stock Purchase Agreement was designated “Confidential,” see KCS-3 at 34, it seems more likely that this agreement was actually designated “Highly Confidential,” see KCS-3 at 160.

see the KCS submission dated May 29, 2003, but they have not filed a “Public Version” of the KCS/TM Voting Trust Agreement. As respects the KCS/TM Voting Trust Agreement, the continuing use of the “Highly Confidential” designation provided for in the protective order granted in Decision No. 1 appears to be excessive. There may, perhaps, be bits and pieces of the KCS/TM Voting Trust Agreement that should be protected under either the “Confidential” designation or the “Highly Confidential” designation. It is highly unlikely, however, that this agreement in its entirety merits such protection. Applicants will therefore be required to file, no later than **June 20, 2003**, either a redacted version of the KCS/TM Voting Trust Agreement or a persuasive explanation of why it is that this agreement requires protection in its entirety under either the “Confidential” designation or the “Highly Confidential” designation.³⁷

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The KCS/TM application in STB Finance Docket No. 34342 is accepted for consideration.
2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. Applicants must file, no later than June 20, 2003, either a redacted version of the KCS/TM Voting Trust Agreement or a persuasive explanation of why this agreement requires protection in its entirety under either the “Confidential” designation or the “Highly Confidential” designation.³⁸

³⁷ If applicants choose to file an explanation in lieu of a redacted version, the explanation, if applicants think it appropriate, may be designated either “Confidential” or “Highly Confidential.”

³⁸ As respects the KCS/TM Stock Purchase Agreement, applicants should also file a redacted version of the items referred to as Annex I and Annex II, see KCS-3 at 163 (these items, although noted in the Table of Contents, do not appear to have been included in either the “Highly Confidential” version or the “Public” version of the KCS/TM Stock Purchase Agreement). If, however, applicants believe that these items should be treated as either “Confidential” or “Highly Confidential,” applicants may submit these items under seal.

5. This decision is effective on June 13, 2003.

Decided: June 9, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

APPENDIX A: PROCEDURAL SCHEDULE

May 14, 2003	KCS/TM application and petition to establish procedural schedule filed.
June 13, 2003	Board notice of acceptance of the KCS/TM application published in the <u>Federal Register</u> .
June 23, 2003	Environmental Appendix and Safety Integration Plan (SIP) due. Supplementation of the KCS/TM application to reflect the implications of KCS/TM common control on the KCS/TM transaction and on competition within the U.S. due.
June 27, 2003	Notices of intent to participate due.
July 1, 2003	Applicants distribute Environmental Appendix and SIP to parties of record and other designated entities, and initiate publication of newspaper notices.
July 2003	Public hearing to be scheduled; date and location to be announced.
July 31, 2003	Comments on Environmental Appendix and SIP due.
August 4, 2003	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the KCS/TM application, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due.
September 2, 2003	Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of KCS/TM application due.
October 17, 2003	Date of service of final decision (if no environmental review is required and no oral argument is held).

EXHIBIT D
Safety Integration Plan

KANSAS CITY SOUTHERN

CATHEDRAL SQUARE • 427 WEST 12TH STREET • KANSAS CITY, MISSOURI 64105

GERALD K. DAVIES
EXECUTIVE VICE PRESIDENT AND
CHIEF OPERATING OFFICER



June 30, 2003

Surface Transportation Board

ref: Safety Integration Plan – Kansas City Southern Railway and Tex Mex

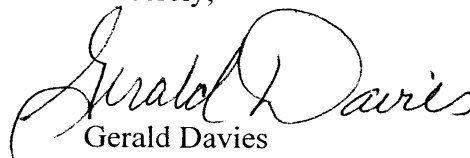
Since Kansas City Southern (KCS) invested in The Texas Mexican Railway Company (Tex Mex) in 1995, Kansas City Southern Railway (KCSR) and Tex Mex have steadily improved the coordination of their operations and leveraged their strengths. Over the last two years the KCSR and Tex Mex have achieved a near seamless operation, creating operating efficiencies for the railways and benefiting customers with better service. Safety is an integral part of this improvement and the attached Safety Integration Plan outlines our commitment to maintaining and raising safety standards.

We consider our union safety leaders and the Federal Railroad Administration as partners in our safety improvement process. These partners have helped KCSR and Tex Mex earn several Gold and Silver E.H. Harriman Safety awards in recent years. Through cooperative approaches with our partners, we will continue to eliminate injuries and train accidents.

Recently there have been a number of changes to our field management team. We have reorganized, hired several seasoned railroad professionals and promoted a number of KCSR / Tex Mex employees into management roles. These professionals are embracing the KCS / Tex Mex Safety Vision, offering high energy and providing strong safety leadership.

We are committed to providing the training, financial and human resources to achieve our safety vision. Senior management will monitor performance and take action to achieve our safety goals. I know I speak for the entire KCSR & Tex Mex management team, when I say we are committed to reaching our Safety Vision of becoming the safest railway in North America.

Sincerely,



Gerald Davies

APPLICANT'S INITIAL SAFETY INTEGRATION PLAN (SIP)

STB Finance Docket No. 34342

KANSAS CITY SOUTHERN

-- CONTROL --

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

July 1, 2003

TABLE OF CONTENTS

- I. EXECUTIVE SUMMARY
- II. INTRODUCTION
- III. SAFETY INTEGRATION PLAN
 - A. Corporate culture
 - B. Training
 - C. Operating practices
 - 1. Operating rules
 - 2. Alcohol and drug
 - 3. Qualification and certification of locomotive engineers
 - 4. Hours of service laws
 - D. Motive power and equipment
 - E. Signal and train control
 - F. Track safety standards and bridge structures
 - G. Hazardous materials
 - 1. Field inspection practices
 - 2. Hazardous materials communication standards
 - 3. Emergency response procedures
 - 4. Information technology systems and personnel
 - H. Dispatching operations
 - I. Highway-rail grade crossing systems
 - J. Personnel staffing
 - K. Capital investment
 - L. Information systems compatibility
 - M. Security
- IV. IMPLEMENTATION OF SAFETY INTEGRATION PLAN

I. EXECUTIVE SUMMARY

On May 14, 2003, Kansas City Southern (“KCS”), a holding company,¹ filed an application with the Surface Transportation Board (“STB”) for approval of a proposed transaction by which KCS would acquire control of The Texas Mexican Railway Company (“Tex Mex”) while continuing in control of The Kansas City Southern Railway Company (“KCSR”) and its wholly-owned subsidiary Gateway Eastern Railway Company² (the “Transaction”). This Safety Integration Plan (“SIP”), developed in consultation with the Federal Railroad Administration (“FRA”), describes how KCSR and Tex Mex plan to ensure that the Transaction is implemented safely and in full compliance with all applicable laws and regulations. The SIP follows FRA’s “Safety Implementation Guidelines.” In developing this SIP, KCSR and Tex Mex have applied lessons learned from other recent railroad transactions.

Subsequent to KCS’s investment in Tex Mex in 1995, the two railroads have steadily improved the coordination of their operations and leveraged their strengths. Over the last two years, KCSR and Tex Mex have achieved a near seamless operation, creating operating efficiencies for the railways, and benefiting customers with better service. As a result, the proposed Transaction will result in no significant changes or disruptions to operations.

The long-standing working relationship between KCSR and Tex Mex, their substantial coordination of functions and the end-to-end nature of the Transaction will assure that the Transaction does not compromise safety. In fact, the Transaction will facilitate improvements to infrastructure, more efficient use of resources and enhanced coordination.

¹ Kansas City Southern Industries, Inc., holding company parent and owner of 100% of the voting stock of KCSR, changed its name in 2002 from Kansas City Southern Industries, Inc., to simply Kansas City Southern.

² As used in Sections I, III and IV herein, the abbreviation KCSR refers to both The Kansas City Southern Railway Company and Gateway Eastern Railway Company (“GWER”). GWER is a Class III rail carrier that owns and operates approximately seventeen miles of rail lines between East Alton, Illinois and East St. Louis, Illinois. In addition, GWER operates via trackage rights over 5 miles of Terminal Railroad Association of St. Louis (“TRRA”) track between WR Tower and Willows Tower, Illinois, and 11.07 miles of The Alton and Southern Railway Company’s track between Lenox Tower and Rose Lake, Illinois. GWER also has operating rights over portions of the former Gateway Western Railway Company (“GWR”) (merged into KCSR in 2001) between East St. Louis and Wann, Illinois. GWER operates one round trip train five days per week between East Alton and East St. Louis, Illinois (CSX’s Rose Lake Yard). Extra trains are operated on an “as needed” basis. GWER began operations in 1994. The Kansas City Southern Railway Company and its wholly-owned subsidiary GWER have identical safety rules and operating practices.

Crew calling, dispatching and customer support for both railways is already consolidated at KCSR's System Transportation Center ("STC") in Shreveport, Louisiana. KCSR and Tex Mex use identical safety and operating rulebooks, and KCSR supports much of the training for both craft and management employees on Tex Mex. Most safety programs and policies on KCSR and Tex Mex are identical, and the cultures of the railways are fully compatible.

This is an end-to-end Transaction, with no overlapping lines, no duplication of facilities and only negligible traffic increases in the next three years. Operating practices and safety work practices will not be compromised as a result of this Transaction, but will continue to evolve as safer and more efficient approaches are introduced.

The Transaction is a logical outcome of the strong working relationship of KCSR and Tex Mex. The Transaction will be handled in line with the joint KCSR and Tex Mex Safety Vision, namely the vision that KCSR / Tex Mex will be recognized as the safest railways in North America. We believe this change of control of Tex Mex supports the attainment of this vision.

II. INTRODUCTION

History

KCSR and Tex Mex have long, colorful histories in the rail industry and in the formation of the United States of America. Both railways offer outstanding employees, pride in their operations, and a commitment to support north-south trade between Canada, the U.S. and Mexico.

KCSR's origins date back to 1887, when Arthur E. Stilwell set out to build a railroad from the U.S. heartland directly south to the Gulf of Mexico. Stilwell achieved his goal by linking Kansas City, Missouri, with Port Arthur, Texas. In the 1930's, KCSR extended its rail network by adding a route through Louisiana. In 1993, KCSR acquired the MidSouth system of railroads. The MidSouth acquisition gave KCSR an east-west route, connecting Dallas, Texas and Meridian, Mississippi.

In 1995, Kansas City Southern Industries, Inc., made strategic decisions to build upon Arthur Stillwell's 19th century vision, purchasing partial ownership in Tex Mex and in Transportacion Ferroviaria Mexicana, S.A. de C.V. ("TFM") in Mexico. In 1997, KCSR acquired control of GWWR (which operated between Kansas City, Missouri and East St. Louis and Springfield, Illinois)³ and its wholly-owned subsidiary, GWER (operating in the East St. Louis area). Through marketing agreements with other Class I railways and coordinated operations with Tex Mex and TFM, the NAFTA Railway system was formed.

KCSR has 3,130 track miles in 10 central and southeastern states. KCSR includes over 2,700 employees, 488 locomotives, 13,561 freight cars, and revenues of approximately \$560 million per year.

Tex Mex dates back to 1856, when construction began on its 157-mile line between Laredo and Corpus Christi, Texas. Today, Tex Mex operates that core stretch of track and has extended its network an additional approximately 400 miles through trackage rights over Union Pacific Railroad Company ("UP") and the properties of the former Houston Belt & Terminal Railway Company ("HBT") in Texas. Tex Mex is one of only two carriers providing direct access to the primary rail gateway at Laredo, where more than 50% of U.S.-Mexico rail traffic crosses the border.

Tex Mex operates approximately 560 track miles (including trackage rights), has approximately 198 employees, 39 locomotives and 950 freight cars. Primary service locations include Corpus Christi, Houston, Beaumont, and Laredo, Texas.

Engineering Department

KCSR has a robust infrastructure and provides expertise, programs, policies and equipment to Tex Mex that historically have not been available to Tex Mex due to its smaller size. KCSR's engineering department provides support and assistance to Tex

³ GWWR was merged into KCSR in 2001. GWER remains a separate company.

Mex in the maintenance and upgrade of track, bridge and signal systems. KCSR's track inspection standards have been implemented at Tex Mex, and a project is underway to upgrade Tex Mex track. KCSR Engineering Department is providing the inspection, planning and project management for the Tex Mex upgrade project. The KCSR engineering department (Maintenance of Way, Signal and Bridge and Building) includes approximately 469 agreement and 75 management employees.

Mechanical Department

KCSR and Tex Mex's mechanical departments work together in a nearly seamless manner. There are 15 mechanical department employees on Tex Mex, and nearly all work as carmen. The KCSR mechanical department includes approximately 295 employees in both the car and locomotive area. KCSR's size and expertise complements Tex Mex's dedicated personnel.

On the Tex Mex, non-transportation employees perform train testing and inspect equipment at Corpus Christi and at Serrano Yard near Laredo. These individuals have received appropriate training and testing on these responsibilities.

Transportation employees perform inspections, per 49 C.F.R. Part 215, Appendix D, at the other locations on the Tex Mex. These individuals have been trained in their inspection duties and will receive an additional round of training by the end of the 1st quarter of 2004 as part of the new Power Brake standard.

Transportation Department

KCSR has approximately 1,166 engineers and trainmen who perform road and yard service. All employees receive periodic training and are regularly tested as described later in this document. The transportation department's leadership consists of experienced railroaders.

Tex Mex has 115 engineers and conductors who perform road and yard service. They receive identical training to that offered at KCSR. In fact, Tex Mex's classroom training for new conductors is performed by KCSR instructors at Shreveport or Laredo. Engineer promotion classroom training is also performed in Shreveport. All Tex Mex and KCSR transportation employees follow the same rule books, and they are all contacted by the same crew callers. Further, all KCSR and Tex Mex trains are dispatched through the KCSR STC in Shreveport.

There is essentially no difference in the training, rules and qualifications of transportation employees at KCSR and Tex Mex, except that Tex Mex transportation employees have not yet been trained on the Management Control System ("MCS"), a state-of-the-art computer system developed by KCSR to better manage shipments and provide more timely information regarding individual shipments. As indicated later in this document, this training will be provided in the third and/or fourth quarters of 2003.

The KCSR and Tex Mex Safety Principles specify that "All employees are responsible to know the rules and safe job procedures for the work they perform." One FRA Regional

office earlier this year expressed concern that transportation employees were not familiar enough with FRA and KCSR rules regarding equipment inspections. The KCSR finds any such unfamiliarity unacceptable, and took the following actions in year 2003 to address this perceived shortcoming:

- Rules training and testing for transportation employees is now required annually, rather than in alternating years as allowed by FRA's rules.
- Issuing new general orders to amend KCSR's rules as directed by FRA.
- A full time operations testing position has been established to monitor and support improved rules compliance. This individual teaches supervisors how to perform effective testing, provides written evaluations of their performance, performs testing of employees, maintains an extensive operations testing database, and targets certain work practices or rules for special focus. The director also coaches supervisors on application of both operating and safety rules. This approach has been highly effective in enhancing knowledge of rules among supervisors and union employees.
- Remedial training (Employee Development Training) has also been provided across the KCSR system for any employee who does not demonstrate satisfactory rules knowledge and compliance during operational testing.

These practices will also be applied on the Tex Mex as needed, based on performance evaluations.

E.H. Harriman Recognition

KCSR and Tex Mex both come from traditions of safety excellence. Over the past seven years, KCSR has received numerous E.H. Harriman Memorial Safety Awards, including Bronze in 1996, 1997, 1998 and 2002, Silver in 1999 and Gold in 2000 and 2001. Tex Mex received a Gold award in 1996, Bronze in 1997 and Silver in 1998. Winning the E.H. Harriman demonstrates a committed safety culture at both railways.

Coordinated training and operations led the two railways to the common safety vision and principles stated below:

KCSR/Tex Mex Safety Vision

The Kansas City Southern Railway and Texas Mexican Railway's vision is to be recognized as the safest railways in North America. This will be achieved through:

- A culture where safety is a value, not a priority subject to change.
- An environment where employees look out for one another and actively participate in improving the safety of all work processes.
- A culture rooted in mutual trust and respect, where employees are encouraged to identify safety concerns and help in their resolution.
- An environment where employees are empowered, and are joint owners of the safety process.

KCSR/Tex Mex Safety Principles

1. We will provide the training, tools, and resources required to support a safe and clean workplace.
2. All employees are responsible for their own safety and that of co-workers.
3. Employees are empowered and expected to discontinue any activity that involves the use of unsafe practices or tools.
4. All employees are responsible to know the rules and safe job procedures for the work they perform.

The safety vision and safety principles are driving factors in raising safety standards. Involvement of union employees in the creation of the safety vision and safety principles lends credibility to these statements and supports empowerment. As the full value and importance of the safety vision and safety principles are further ingrained into the culture, it is expected that empowerment will continue to grow and safety standards will rise even higher.

Safety Committees

Safety committees are the backbone of the KCSR safety culture. Craft and management employees have worked together to develop and implement the Safety Through Awareness and Responsibility (“STAR”) Safety Rule book, emergency plans at KCSR terminals, and processes to improve housekeeping, work practices, customer safety and awareness. Safety committees provide strong safety leadership through role modeling, coaching of peers and through implementing education and recognition processes. Safety committees have been in place for several years throughout the KCSR system, and dedicated craft and management safety leaders have helped KCSR achieve one of the most safety-conscious cultures in the rail industry.

Tex Mex has established safety committees that have offered strong support in raising safety standards. The committees are made up of individuals committed to reducing risk, teaching others and creating a safer place to work. The Tex Mex committees are a vital part of safety and, with additional training, will develop into even stronger proponents for safety.

KCSR has developed leadership courses for safety committees, as well as a Safety Committee Leadership Guide. The training and guide will be offered to Tex Mex safety committees and will continue to be supported by management. Tex Mex safety committee members will be invited to regional safety meetings, so that best practices can be shared and energies can be focused on those activities that are most effective in reducing the risk of injuries and accidents. Through the integration process, KCSR and Tex Mex safety committees will continue to grow and become an even more important part of the culture.

Train Accident Prevention

The prevention of train accidents at KCSR has been an area of intense focus over the last several years. Derailment prevention training, infrastructure improvements, root-cause

analysis, goal setting and communication of performance has led to improved results. Many KCSR and Tex Mex managers completed derailment prevention training in 2002. Through the knowledge they have gained, better-targeted corrective actions are being put in place to reduce the risk of train accidents.

Train accident prevention practices are essentially the same on KCSR and Tex Mex, so no significant changes to the process are anticipated as part of the integration.

The following outlines KCSR and Tex Mex's train accident experience over the past two and a half calendar years:

Number of FRA Reportable Derailments				
KCSR			Tex Mex	
Year	# Derailments		Year	# Derailments
2001	63		2001	13
2002	57		2002	5
2003 (Jan. – June)	30		2003	4

Although the number of FRA Reportable Derailments has been fairly constant, the severity of the derailments has been reduced on KCSR, as shown by a significant decline in total derailment costs from 2001 to June 2003. .

FRA Reportable Derailments Costs				
KCSR			Tex Mex	
Year	Costs		Year	Costs
2001	\$ 10,847,453		2001	\$1,568,700
2002	\$ 5,881,633		2002	\$1,411,510
2003 (Jan. - June)	\$ 2,666,248		2003 (Jan - June)	\$1,737,400

Security

The advent of the September 11th terrorist acts strengthened the commitment of KCSR and Tex Mex to enhance operational security. KCSR participated in the development of the comprehensive security plan assembled through the Association of American Railroads ("AAR"). KCSR and Tex Mex evaluated vulnerabilities on their respective properties and each has taken action to enhance security. The changes are in line with recommendations in the AAR Railroad Security Plan. KCSR and Tex Mex-specific security plans were developed. (For additional information, see Section III.M below.)

KCSR and Tex Mex will both provide HM-232 hazardous materials ("hazmat") security training to hazmat employees by the end of September 2003, even before the STB is scheduled to decide KCS's application for authority to control Tex Mex. This training will support past security communication to employees and will reinforce the commitment of KCSR and Tex Mex to continually raising security standards.

KCSR presently has seven law enforcement officers on staff and Tex Mex has two officers. These officers are augmented by contracted security personnel, as needed, and as potential threats arise. The law enforcement programs are essentially the same and no changes to the programs are anticipated.

Operations Testing and Auditing

KCSR and Tex Mex both have operations testing programs in place, as required by the FRA. KCSR has a General Director-Rules and Testing, who offers extensive support to officers performing the testing. In particular, he provides written and verbal feedback to supervisors on their performance, and keeps senior field managers aware of their progress. He also monitors and analyzes the operations testing database to spot trends and to help ensure repeated rule and work practice violations are properly addressed and eliminated.

Tex Mex has an operations testing program in place, and recently Tex Mex supervisors were provided additional training by KCSR's General Director-Rules and Testing. Through this training, through interaction with FRA, and with support from more senior supervisors, the operations testing process continues to improve on Tex Mex.

As part of the integration, Tex Mex and KCSR will share a common database to track supervisor and employee operations testing performance. The KCSR General Director-Rules and Testing will also provide coaching on both KCSR and Tex Mex to help supervisors enhance their abilities. He will also facilitate cross-craft testing to improve teamwork between supervisors. Through this safety leadership, the safety standards of KCSR and Tex Mex will continue to improve.

Government Reporting

KCSR's government reporting office is located in Shreveport and has demonstrated exceptional performance. The reporting office has received strong praise from the FRA Region 5 investigators for its performance. They have verbally told KCSR that it does one of the best jobs of performing the reporting function in the rail industry. A recent three-week review of KCSR government reporting records by the FRA resulted in minimal exceptions.

Tex Mex and KCSR have agreed that KCSR will assume responsibility for the tracking and reporting of personal injuries, grade crossing incidents, derailments and similar incidents on the Tex Mex. Transition of these responsibilities was completed July 1, 2003. This transfer of reporting duties to the KCSR Shreveport office will prevent any disruption in the reporting process as part of the integration. The in-depth knowledge possessed by KCSR's reporting office personnel will offer improved accuracy of records and reporting.

Management Control System

KCSR: MCS, a computerized shipment tracking and management system, was implemented on KCSR during 2002. MCS is designed to enhance tracking of rail cars and to enhance planning to facilitate timely movement of traffic. From a safety

perspective, MCS helps ensure that hazmat cars are properly placed in trains. It also facilitates improved on-time performance, which in turn assists employees with their lifestyle planning and helps ensure they are well rested prior to reporting for duty. It further facilitates sharing of information.

Tex Mex: Currently the Tex Mex operates using a Remote Method Invocation (“RMI”) operating system. The system is similar to the Legacy system that KCSR used prior to MCS. The system has many of the same limitations as the Legacy system regarding report generation and information gathering. It also does not support automatic equipment identification (“AEI”) of hazmat violations.

In the 3rd & 4th quarters of 2003, MCS will be implemented on Tex Mex. The lessons learned implementing MCS on KCSR have been incorporated into the software and training process. Due to these changes, MCS implementation should cause minimal disruption to Tex Mex. KCSR will provide training and support personnel to facilitate this transition, as explained in greater detail later in this document.

Federal Railroad Administration Working Relationship

KCSR and Tex Mex have good working relationships with FRA. Over the last several years, two of the Deputy Administrators of FRA (Region 5) have stated on several occasions that KCSR has not only the longest-standing “active” Safety Assurance and Compliance Process (“SACP”) in the rail industry, but one of the most effective. Although FRA has from time to time taken exceptions to KCSR’s practices, KCSR has consistently responded in a vigorous manner to deal with the concerns and to raise its standards where indicated. In fact, one Region 5 inspector regularly identifies the KCSR dispatching office as a model for other regional and short-line railways to follow. KCSR has also received strong praise for its work with union employees to include them in meaningful ways in the safety process. The meaningful involvement of union employees to develop the STAR safety rule book, the Safety Committee Leadership Guide and union involvement in System Safety and Environmental Assessments are all part of this cooperative approach that is consistent with SACP.

KCSR has been an active member of FRA’s Rail Safety Advisory Council (“RSAC”) and has participated in several subcommittees in support of the rule-making process.

KCSR is a member of North American Rail Alertness Partnership (“NARAP”), and has completed or planned several alertness-related initiatives. Here are two initiatives now in process:

- As part of KCSR’s support of NARAP and improving alertness, KCSR is working in cooperation with FRA and University of Denver to implement a pilot program involving the use of actigraph watches in 2003. The program is designed to offer employees a real-time measure of their level of alertness. The information offered by the watch is designed to help employees make better lifestyle choices related to sleep, napping and work planning. Approximately 65 transportation, signal and management employees will participate in this pilot program.

- KCSR has also committed to help develop and pilot with FRA and Texas A&M University a new Crew Resource Management (“CRM”) training process. The training will be offered to a cross-section of mechanical department employees, as part of an overall pilot program. If the training proves successful, it will become available to the entire rail industry. This training is consistent with National Transportation Safety Board safety recommendations. KCSR and Tex Mex intend to offer the training to appropriate employee groups throughout the railways in 2004-5.

Tex Mex has worked closely with FRA in many safety-related areas. This strong working relationship has helped Tex Mex raise safety standards. It is expected that through further integration of their operations, KCSR and Tex Mex will continue their constructive working relationships with FRA and will achieve even higher standards of safety. KCSR and Tex Mex view FRA as a partner and not just a regulatory agency.

III. SAFETY INTEGRATION PLAN

As stated in Section I, KCSR and Tex Mex already are substantially integrated on an operational level. Crew calling, dispatching and some customer support for both railways is already consolidated at KCSR's STC in Shreveport, Louisiana. KCSR and Tex Mex's safety and operating rulebooks are the same, and KCSR provides or supports much of the training for both craft and management employees on Tex Mex. Most safety programs and policies on KCSR and Tex Mex are identical, and the cultures of the railways are fully compatible. Accordingly, significant steps that might have to be taken to integrate previously-unaffiliated railroads have already been taken by KCSR and Tex Mex due to their close affiliation for nearly a decade.⁴ This significantly reduces the work remaining to be done to safely integrate the two railroads. KCSR and Tex Mex, however, recognize the need to proceed thoughtfully and thoroughly with the steps outlined below which will fulfill their planned integration under common control.

A. Corporate culture

1. Identify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction;

The following bullet points describe some of the key characteristics of the KCSR and Tex Mex cultures.

KCSR Culture

- Safety is a value, not a priority subject to change. Employees believe in the safety vision.
- Leadership is very diverse in that many are experienced railroad professionals with extensive experience on other railways.
- Pride in railway history.
- People feel empowered to make safe decisions without fear of reprisal for lost production.
- Generally good relations with unions.
- Significant classroom and some on-the-job training.

Tex Mex Culture

- Safety is a value.
- Management demonstrates excellence in working with many government organizations.
- Nearly all members of the management team are bilingual.
- Pride in railway history.
- Generally good relations with unions; craft and management employees generally have strong working relationships.

⁴ Tex Mex and KCSR are not merging, and each will continue to be headquartered at its current headquarters location. It is expected that current Tex Mex management, supervisors and employees will remain in place after KCS's acquisition of control of Tex Mex is completed following the STB authorization of the transaction.

- Significant on-the-job training.

2. Describe how these cultures lead to different practices governing rail operations;

The integration of many systems and processes at KCSR and Tex Mex over the last two years has resulted in nearly identical expectations and requirements. The extensive interaction and good working relationship will allow integrating these railroads with little or no disruption of service, and no disruption of safety performance.

The cultural practices that appear to be different and actions to be taken to overcome differences:

- Tex Mex supervisors sometimes speak in Spanish to facilitate clarity of communication with some of their employees whose primary language is Spanish. Few KCSR supervisors speak Spanish, because the hiring pool in the areas where KCSR operates is comprised almost 100% of persons for whom English is the primary language. To the extent that additional management hiring is needed on Tex Mex, bilingual fluency will continue to be an important asset for candidates. Although there has been no apparent need for KCSR mechanical personnel to speak or read Spanish, should such a need arise, Tex Mex supervisors are readily available by telephone or can be faxed information in the unlikely event translation assistance is needed. In addition, a former Tex Mex dispatcher who is bi-lingual now is employed by KCSR in Shreveport.
- Tex Mex employees are used to doing a great job with limited resources. This can lead to some risks that are unacceptable and a tendency by some employees not to empower themselves as expected by the safety vision. KCSR employees have generally worked in an environment where greater resources are available. This has supported greater empowerment by employees. Through the integration of KCSR and Tex Mex, greater resources will be available and empowerment of Tex Mex employees will be enhanced. Also, classroom training will receive a greater emphasis to supplement on-the-job training.

3. Describe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of “best practices” when the Transaction is implemented.

Best practices have already been implemented for nearly every safety-related process. Through training, sharing and discussions, no additional measures are necessary to develop a new system of best practices.

B. Training

Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency, qualification, and familiarity with the operating rules and operating tasks of territory assigned of the

following employees, either when these employees are assigned to a new territory or the operating rules on a given territory are changed:

1. Employees who perform train and engine service;

Transportation

KCSR: Formal classroom, written examinations and informal training and reviews are conducted on an ongoing basis to ensure safe operations and rules compliance.

Training classes include:

- Operating Rules
- Safety Rules Training
- Fatigue/Alertness Management
- Back Injury Prevention
- HM232 – HazMat Security
- Hostler Training
- New Conductor Training & Testing
- Engineer Training and Testing
- Others

All promoted engineers receive engineer recertification training and examination in compliance with Federal Engineer Certification regulations. This includes five weeks of classroom training and 20 weeks of training with an experienced engineer. (*See Section C for more details*)

All new conductors receive four weeks of classroom training and eight weeks of field training. This training is currently provided at the Shreveport training center or in Laredo. (*See Section C for more details*).

Safety marathons, operations testing, peer coaching and computer based training (“CBT”) all provide learning opportunities for transportation employees. Testing and observations continue to be an integral part of these programs.

Tex Mex: After STB approval in 1996 of Tex Mex’s trackage rights over UP and the HBT, Tex Mex personnel underwent extensive training designed to familiarize and train the Tex Mex transportation employees for enhancement of the safe and efficient rail operations over a major Class 1 railroad. This training included classroom lectures, discussions, quizzes and written examinations over all General Code of Operating Rules (“GCOR”). Special emphasis was given to main track authority and large terminal operations. Tex Mex supervisors were given qualification experience and familiarization of the physical characteristics and operations over all trackage rights. All transportation employees then received field training and instructions on the physical characteristics and operations over these new territories. Additional tests, including field efficiency tests and observations, were conducted frequently to ensure continued safe operations and rules compliance.

Change in Method of Operations

In early 2002, the decision was made to change the method of operation on Tex Mex from Track Warrant Control to Direct Train Control, with an effective date of June 2002. In April and May 2002, comprehensive classroom training and examinations were given to all train and enginemen covering Direct Train Control Operations in preparation for this change. In addition, classes covering GCOR and hazmat rules and regulations were given as part of the ongoing training program. Written examinations were administered for all subjects. To date, no incident has occurred on Tex Mex which is traceable to this change.

As part of the ongoing training process, Tex Mex transportation employees will be offered a more formal back injury prevention program and fatigue alertness training. All other additional training will be incorporated at KCSR and Tex Mex as it becomes available.

2. Employees who inspect and maintain track and bridges;

All KCSR bridge inspectors have successfully completed formal bridge inspection training as provided by AAR. The inspectors are all very experienced in the bridge inspection process and requirements. KCSR and Tex Mex have contracted with Osmose Railroad Services, Inc. ("Osmose") to supplement the normal bridge inspections and create an improved database process for maintaining bridge records. KCSR's and Tex Mex's programs are identical.

All track inspectors (Track Supervisors, Roadmasters and Division Engineers) on the KCSR and Tex Mex have been trained on FRA track inspection standards and have received on-the-job training. The track inspectors attend FRA track inspection classes that are offered by the American Railway and Engineering Maintenance-of-Way Association or Track Sense. Division Engineers provide oversight, records review and coaching of inspectors to help ensure that high standards are maintained. The KCSR and Tex Mex programs are identical.

Engineering Department employees receive the below-listed training:

Engineering Department Training	
GCOR and Safety Rules	Fall Protection (select)
Roadway Worker Protection	Lone Worker Training
Lockout – Tagout	Fork Truck Safety (select)
Backs Plus	Platforms and Manlifts (select)
Emergency Preparedness	Hazard Communication
Fire Extinguisher Training	Ladder Safety
CPR / First Aid (select)	Fatigue / Alertness
Confined Space Entry (select)	Coaching
Crane Safety (select)	Heat / Cold Stress
Job Briefings	Lyme Disease
Hazmat	Hearing Conservation
Rigging (select)	Electrical Safety
Driver Safety	

3. Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;

KCSR and Tex Mex presently offer identical training for any newly-hired carman through an apprentice carman program. The program is offered through the Railroad Education Bureau (“REB”) based in Omaha, Nebraska. All new carmen are required to successfully complete a total of 108 lessons over a three year period of time. This program is an integral part of the union contract and is considered a condition of employment. The apprentice training process complies with FRA regulations and good industry practice. Ongoing training from both railways is also the same and the courses provided to employees are listed below.

Locomotive employees at KCSR also participate in a formal apprentice program through REB. All new employees are required to complete a total of 108 lessons over a three-year period of time. This program is an integral part of the union contract and is considered a condition of employment. The apprentice training process complies with FRA regulations and good industry practice. Ongoing training from both railways is also the same and the courses provided to employees are listed below. Tex Mex contracts out nearly all locomotive work and so does not participate in the locomotive apprentice program.

Inspections of locomotives on the Tex Mex are performed by contractors or supervisors who have received proper training. Any additional inspection-type training that is deemed necessary will be provided to Tex Mex mechanical department employees within 90 days of change of control.

Here is a list of training courses that KCSR provides to Mechanical Department employees:

Mechanical Department Safety Training (40 hour minimum per year)	
Operating and Safety Rules	Fall Protection
Lockout – Tagout	Fork Truck Safety
Backs Plus	Platforms and Manlifts
Emergency Preparedness	Hazard Communication
Fire Extinguisher Training (select)	Ladder Safety
CPR / First Aid (select)	Fatigue / Alertness
Confined Space Entry (select)	Coaching
Crane Safety (select)	Heat / Cold Stress
Job Briefings	Lyme Disease
Hazmat	Blue Flag Safety
Rigging	Electrical Safety
Security	Hearing Conservation

4. Dispatchers or operators;

All dispatching for the KCSR and Tex Mex is performed by personnel at the Shreveport STC. The following outlines orientation and training processes for dispatchers.

Initial Orientation - Student dispatchers are issued all educational and instructional information (*i.e.*, GCOR Rule Books, Train Dispatcher Manuals, Hazmat Emergency Guidebook, Safety Rule Book, Timetable, Study Guides, etc.). Students are briefed on the training process and are assigned to a veteran dispatcher, beginning the in-house process. This training period will consist of no less than sixty (60) days. Additional days of training will be considered on a case by case basis after a review of the student's abilities. During this time period, each student will be assigned one (1) console and will work each shift with a veteran dispatcher. Student dispatchers initially observe the dispatching process and then progress to assuming full dispatching responsibility under the watchful eye of the veteran dispatcher.

CBT - Students have access to GCOR workbook modules through the Internet via the KCSR web site to facilitate home study.

Student Evaluations (Ref. Dispatcher Manual 80.32) - Student dispatchers are evaluated by their peers. Train dispatchers are required to submit a completed evaluation form to the supervisor at the end of each tour of duty. Review of these evaluations assists in the development of student dispatchers.

Familiarization with Territory (Road Trips) - During the training phase, student dispatchers are required to take road trips on the territories/districts for which they will have dispatching responsibility. Upon completion of each road trip, they are required to submit a review of their findings to the supervisor. (Note: During the transition of

dispatcher responsibility to KCSR for the Tex Mex, applicable dispatchers performed a road familiarization trip on the Tex Mex.)

Classroom Training - This is completed in two (2) phases. The first phase begins approximately 30-45 days after the training process has begun. This is a one (1) day open discussion, question and answer session on method of operations, types of authorities, etc. In the second phase of training, students will attend an additional three (3) days of classroom training to review dispatching process, GCOR, Dispatcher Manual, Roadway Worker Protection, Timetable, Special Instructions, etc. The students will take a test encompassing each of these areas. They must score 90% or higher to receive Train Dispatcher Certification. Additional classroom training days will be added as deemed necessary.

Refamiliarization with Territory (Ref. Dispatcher Manual 80.7.2) – A refamiliarization process must be arranged before performing duties at a position where trains and/or maintenance-of-way workers are authorized if it has been more than 180 days since the Dispatcher last worked on that territory. To be considered re-qualified, the Dispatcher must work under the direct supervision of a Train Dispatcher qualified for that territory for a minimum of one (1) day on a position with the same type of authority and/or equipment of the position to be worked.

5. Employees who inspect and maintain signal and train control devices and systems;

These employees receive the same training as other Engineering Department employees as identified in Section B.2. All new employees attend a signal training school for a six-week training course. The course covers basic to advanced signaling. KCSR and Tex Mex suppliers also provide product-specific training as new products are approved and become available. Remedial training is also offered on a case by case basis.

The training requirements for the Tex Mex are identical to those on the KCSR.

6. Hazardous materials personnel, including information technology personnel who affect the transportation of hazardous materials;

Applicable KCSR employees receive hazmat training at least once every three years. The course has been customized based on the area of responsibility and complies with the applicable Federal regulatory requirements. Applicable Engineering and Mechanical Department employees are provided traditional classroom training and testing. Transportation employees meet the applicable requirements by taking on-line training through a CBT course. Testing is an integral part of both classroom and CBT training.

Applicable Tex Mex employees receive hazmat classroom training at least once every three years. The training is designed to comply with applicable Federal regulations. At the present time hazmat training is being provided as a normal part of the annual

Mechanical and Engineering Department training. Transportation will be moving away from classroom training and will begin using CBT in 2004.

The FRA has offered positive comments about the significant improvement related to hazmat regulation compliance at the KCSR. Training, including assistance by the FRA, and implementation of the MCS system has played a significant role in this performance improvement. However, the FRA indicated that “some of the hazmat patterns that shippers use, as provided by KCSR, still have some problems.” To address this concern, KCSR has taken aggressive action to review all ‘patterns’ and has corrected any data inaccuracies. KCSR has also implemented a ‘no-bill, no-pull’ policy, to prevent any improperly-documented hazmat load from being moved. In the estimation of KCSR’s hazmat specialist, the KCSR hazmat performance is now at least on par with any other Class I railway in North America. Installation of the MCS system at Tex Mex will bring these improvements to Tex Mex as well. This being said, KCSR will continue to address hazmat issues and take corrective action as appropriate.

7. Employees who maintain or upgrade communication systems affecting rail operations;

Employees and contractors who maintain or upgrade communications systems and equipment on or adjacent to the right-of-way are trained annually in On-Track Safety, as Lone Roadway Workers, and Watchmen/Lookouts, and every other year on hazmat and GCOR. Currently, these rules and the training requirements are identical across KCSR and Tex Mex. Changes to the operating rules are communicated via General Order, and all GCOR-certified personnel are required to have copies of all active and current General Orders in their possession prior to fouling track. New employees or contractors are prohibited from working in sufficient proximity so as to be fouling the track until they have completed the necessary On-Track Safety and/or GCOR classes.

8. Supervisors of employees enumerated in paragraph (b)(1) through (7) of this section.

Supervisors are expected to attend the same training (or equivalent) as is required of the people they supervise. In addition, Management Development Training is provided on a periodic basis to supervisors at the KCSR and Tex Mex. Management Development Training includes training in areas such as:

- Safety Leadership
- Safety Fundamentals
- Drug and Alcohol
- Quality
- Leading a Meeting
- Time Management
- Regulatory Reporting
- Operations Testing
- Injury Management

- Effective Communication
- Derailment Prevention Training
- Sexual Harassment
- Others

C. Operating Practices

- 1. Operating Rules. Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations and freight or passenger services.**

For the government and safe operation of freight rail operations on the KCSR and Tex Mex, the following sources of rules, instructions and information are used:

GCOR, effective April 2, 2000, as adopted and utilized by KCSR and Tex Mex for the safe and efficient operation of rail transportation. Revised periodically by Class 1 and numerous other railroads rule committees.

KCSR Timetable #5, including Tex Mex, effective July 19, 2002. Published as needed by KCSR for the timely update of System Special Instructions, Terminal Special Instructions and Trackage Rights Instructions for both KCSR and Tex Mex.

Certification of Locomotive Engineers and Remote Control Operator Submission: Amended November 1, 2002. - Complies with 49 CFR Part 240 and FRA Notice of Safety Advisory 2001-01. Revised as needed.

General Orders, Circulars and Bulletins are issued timely to reflect changes in the GCOR and KCSR and Tex Mex System Special Instructions. These additional sources are used for the timely distribution of other essential operating instructions and information. They are periodically revised as needed.

STAR Rules, effective November 5, 2000. Addresses Safety Rules, Safety Statement, Safety Vision and Safety Principles for all crafts, focusing on core and general safety rules. This rulebook is applicable to all employees of KCSR and Tex Mex . The STAR Rules are updated as necessary.

Safe Job Procedures for Transportation Employees, effective September, 2001, providing more detailed guidance on the actual job procedures that professional railroaders have found to be the safest when performing their duties. Applicable to both KCSR and Tex Mex employees.

KCSR Air Brake Systems and Train Handling Rules and Instructions, effective July 1, 1999. This book provides rules, instructions and information for safe and efficient train handling operations applicable to both KCSR and Tex Mex employees. Revised as

needed to reflect changes in regulations, new technology and company policies and practices.

The KCSR Locomotive Mechanical Manual for Train Operation. This manual is applicable to employees of both KCSR and Tex Mex, providing the necessary information to better perform the duty of Engineer and Trainman in a safe and efficient manner. Revised as needed to reflect changes in regulations, new technology and company policies and practices.

United States Hazardous Materials Instructions for Rail (as contained in KCSR System Timetable #5, effective July 19, 2002). These instructions were developed by the rail industry in conjunction with Federal regulatory guidance for the safe transportation of hazmat. This is a source of consistently standard rules and regulations to enhance employee safety and the safety of the communities through which we operate. It is revised as needed to reflect regulatory changes and company policies and practices.

The Emergency Response Guidebook. Developed by Transport Canada ("TC"), The U.S. Department of Transportation ("DOT") and The Secretariat of Transport and Communications of Mexico ("SCT"). This Guidebook is used as safety and emergency response training material for all transportation personnel of both KCSR and Tex Mex who have a direct effect of the safe transportation of haz mat.

2. Alcohol and drug. Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219.

KCSR: The following is an outline of the KCSR Drug and Alcohol Testing program, as required under 49 CFR part 219.

NOTICE OF DRUG/ALCOHOL TESTING

(effective January 1, 2003)

The following information regarding drug/alcohol testing is required to be provided to employees of Kansas City Southern, The Kansas City Southern Railway Company and The Gateway Eastern Railway Company, who are subject to testing under regulations of the Federal Railroad Administration (FRA), 49 C.F.R. Part 219, and regulations of the Federal Motor Carriers Safety Administration (FMCSA), 49 C.F.R. Part 382. Generally, the FRA regulations referenced above apply to employees covered by the Hours of Service Law and the FMCSA regulations referenced above apply to employees required to possess a Commercial Driver's License. All employees are subject to testing under Company Policy.

The information provided below is necessarily general in nature, and if any employee has a specific question not covered in this notice, the employee should consult the actual regulations.

1. If employees have questions about these policies, they should contact their immediate supervisor.
2. The classes or crafts of employees who are subject to the provisions of the FRA and FMCSA regulations are employees who perform Hours of Service duties and drivers required to have a Commercial Driver's License.
3. Those employees performing duties under the Hours of Service Law or CDL Operators are considered to be performing safety sensitive functions and will be required to be in full compliance with these regulations regarding the use or possession of alcohol or controlled substances.
4. Any employee is prohibited from reporting for duty or remaining on duty in a condition prohibited by the FRA, FMCSA or Company Policy.
5. Employees will be tested for drugs and/or alcohol under the following circumstances by FRA, FMCSA or Company authority:
 - A. Leniency Follow-Up
 - B. Periodic
 - C. Post Accident
 - D. Pre-employment
 - E. Random
 - F. Reasonable Cause
 - G. Reasonable Suspicion
 - H. Return to Work
6. All employees are subject to drug and alcohol testing when there is reasonable cause for such test. The test will be conducted under the authority of the KCS unless the employee is governed by the requirements set forth in the regulations published by the FRA or FMCSA for mandatory post accident or reasonable suspicion testing.

This testing, not mandated by the FRA or FMCSA, will be required for any type of accident, incident or rule violations, unless the investigating officer can determine the employee(s) had no role in the cause or severity of such. This also includes suspicion of non-covered employees being under the influence of a controlled substance and/or alcohol.
7. Employees will be notified verbally and/or in writing by a supervisor that he/she will be tested under either the FRA, FMCSA or Company authority. The testing will be done in a private and controlled environment. Employees will be required to provide a urine specimen of at least 45 milliliters (ml.) for the purpose of testing for the use of prohibited drugs and/or provide an adequate breath sample for alcohol breath testing with an Evidential Breath Testing Device (EBT) to

measure alcohol concentration. An employee will be allowed a maximum of three (3) hours in order to provide a urine sample. If the employee cannot produce an adequate void, they will be instructed to drink not more than 40 ounces of fluid. After the three (3) hour period has expired and if the employee is still not able to provide a sufficient sample, they will be removed from service pending a medical evaluation to determine if the inability to provide a specimen is genuine or constitutes a refusal to test. During alcohol breath testing, if the employee does not provide enough breath for an adequate sample, they will be instructed for a second time on how to take the breath test. If the result is the same, the employee will be removed from service pending a medical evaluation to determine if the inability to provide breath is due to a medical condition or if the failure is considered a refusal.

8. Should an employee refuse to participate in these tests or attempt to alter the results of such tests in any manner, such employee will be subject to dismissal. An employee who is using a controlled substance without medical authorization or has an alcohol concentration level of .02 or greater will be removed from service. Employees must cooperate with the collector during the testing process.
9. The Company's Voluntary Referral and Co-Worker Referral Policies are attached for your information. These Policies contain important information concerning the abuse of alcohol and controlled substances, and should be carefully reviewed by each employee.

Tex Mex: The above program has been adopted in full by the Tex Mex. All officers have received training from the FRA or KCSR on the specifics of the program. The only difference in the program at this time is that KCSR and Tex Mex use different testing companies.

3. Qualification and certification of locomotive engineers. Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR part 240.

KCSR has an approved submission to the FRA in compliance with 49 CFR Part 240 Qualification and Certification of Locomotive Engineers. All student engineers receive engineer training and examination in compliance with regulations. This includes 5 weeks of classroom training and a minimum of 20 weeks of training with an experienced engineer. It requires successful completion of an oral exam, a written exam and a simulator check ride. The student engineer must also pass a check ride over their territory as determined by a Manager of Operating Practices ("MOP").

Engineers are required to pass annual check rides with MOPs in their assigned areas. Every three years, engineers must also complete recertification.

In 2001, KCSR submitted a Remote Control Locomotive (“RCL”) operations plan to the FRA. This submittal specifies that KCSR provides RCL operators one week of classroom training and one week of field training. Students complete both classroom and field testing and evaluation to ensure performance standards are met. RCL operators are also checked at least annually by a Designated Supervisor of Remote Control Operations for recertification.

The identical RCL certification processes will be followed on the Tex Mex, when the decision is made to introduce RCL operations on the Tex Mex. It is anticipated that RCL operations will commence on the Tex Mex in late 2003 or in 2004. .

4. Hours of service laws. Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

All Train Dispatchers are governed by the Federal hours of service law. Any on duty time in excess of nine (9) hours after having 15 consecutive hours off duty would be a violation of this law because KCSR Train Dispatchers work at the STC, where there is more than one shift. In order to receive the appropriate rest/time off, Dispatchers must have a minimum of fifteen (15) hours off between assignments. KCSR complies with this requirement. (KCSR Dispatchers also dispatch Tex Mex, so compliance by KCSR Dispatchers also constitutes compliance by Tex Mex.) Employees are instructed in the application of GCOR Rule 1.17, Hours of Service Law.

Transportation employees are governed by the Federal hours of service law. On duty time may not exceed twelve hours following 10 hours of off duty time. If the employee works less than, 12 hours the individual receives at least 8 hours of off duty time. KCSR and Tex Mex comply with this requirement. Employees are instructed in the application of GCOR Rule 1.17, Hours of Service Law.

The KCSR has also proposed a special schedule agreement with the Brotherhood of Locomotive Engineers for a pilot area. If successful, this approach will be considered for other locations.

Signal employees are governed by the Federal hours of service law. Any duty-time of 12 consecutive hours requires 10 hours off duty. If an employee works less than 12 hours, they receive at least 8 hours off duty. KCSR and Tex Mex comply with this requirement. Employees are instructed in the application of GCOR Rule 1.17, Hours of Service Law.

In 2003, all KCSR and Tex Mex employees are being provided training and information on sleep disorders and napping. This training complements the previous alertness management training that was offered across the KCSR system in 2000 and 2001.

D. Motive power and equipment

Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and the designated facilities used, or to be used, to repair such equipment.

KCSR: There are major locomotive shops at Shreveport, Louisiana and Kansas City, Missouri. Smaller locomotive service facilities are located at Artesia, Mississippi, Heavener, Oklahoma and Beaumont, Texas. These employees at these facilities have received training as described in Section B.3.

There are major car repair shops at Shreveport, Louisiana and Kansas City, Missouri. Smaller car shops are located at Artesia, Mississippi, Heavener, Oklahoma and Beaumont, Texas. The employees at these facilities have received training as described in Section B.3.

Although KCSR has one of the lower mechanical-caused derailment ratios as compared to peers, the mechanical defect ratio is higher than desired. Steps taken to address this matter include:

- increased accountability of managers through supervisors being required to sign-off on repairs prior to equipment leaving shops
- clarifying and raising expectations for employees on the importance of properly repairing equipment.

Tex Mex: Nearly all locomotive-related work on the Tex Mex is contracted with the original equipment manufacturer (OEM) or Alstom Corporation. Locomotives on the Tex Mex are leased from the OEM, and the OEM has primary responsibility to maintain the fleet of locomotives. Qualified and knowledgeable Tex Mex management personnel will inspect for adequacy of repairs.

Locomotive inspections and minor repairs are performed by Tex Mex management employees or contractors. These employees are trained to inspect and/or perform repairs.

There are repair tracks (RIP Tracks) at Corpus Christi and Laredo (Serrano Yard) on the Tex Mex. Car repair work is also done on-line using a wheel truck. Repairs that cannot be performed on the Tex Mex are performed in Mexico, at Shreveport, LA or through contract shops.

If defective equipment is in Mexico and should need to be moved into the United States, qualified management is available on the Tex Mex to determine if the defective equipment is safe for movement. If FRA personnel also need to inspect the defective equipment in Mexico, they can perform such inspections through their arrangements with the Mexican government.

The only anticipated operational change is that car repair billing will likely be consolidated in Shreveport, subject to contract negotiations. It is not anticipated, for

example, that a change in operations will occur which would cause KCSR or Tex Mex to bring rail cars or locomotives that are normally operated in Mexico and that suffer mechanical problems there into the U.S. on a regular basis to be repaired. Should the need arise to bring a defective cars or locomotive across the border for repair, Tex Mex would, of course, follow FRA's procedures for obtaining one time movement authority for the movement of such equipment. Again, however, KCSR and Tex Mex do not anticipate any increase in this practice above current levels.

E. Signal and train control

Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, and any planned amendments or modifications to capital improvement and research and development projects for signal and train control operations.

KCSR: KCSR currently operates 941 miles of track under Centralized Traffic Control ("CTC"), which consists of 185 control points with approximately 195 power switches; 88 miles of track under Automatic Block Signals; 1844 miles of track under Direct Traffic Control and Track Warrant Control; and 439 miles of branch line track under timetable or train order. There are 1120 existing Active Warning Devices, 132 existing Hotbox Detectors, 20 Spring Switches and 16 DTMF-controlled Power Switches currently in operation on KCSR.

The following capital improvements are planned on KCSR, including capital improvements that will upgrade to CTC the yard limits at Greenville, Texas and Monroe, Louisiana to improve efficiency through the yard.

- \$120,000 - Upgrading existing K2 code line to Radio from Heavener and Shreveport, on the Shreveport Subdivision.
- \$310,000 - To install and upgrade control points in Greenville TX, in conjunction with making the DGNO interlocker dispatcher controlled and closing up CTC through Greenville, and to add three control points at Monroe, LA to put CTC in service through the Monroe yard limits
- \$90,000 - Upgrade electrocode II, to electrocode 5, on the Texas Line.
- \$180,000 - Upgrade existing Hot Box Detector Systems at the following locations on the Alexandria and New Orleans Subdivision.
 - East Point, LA - 590.6
 - Clarence, LA - 626.6
 - Aloha, LA - 651.5
 - Hyde, LA - 724.5
 - Lettsworth, LA - 737.2
 - Chamberlin, LA - 776.3
 Also includes replacing three outdated systems between Kansas City and East St. Louis
- \$30,000 - KCS portion of State Project CSJ024802-045. Install

- Flasher and Gates at Mount Pleasant St. in Pittsburg, TX. DOT 331519 D⁵
- \$100,000 - Install 3 Micro-Hot Box Detector systems, complete with Dragging Equipment Detection near MP 407.3, Mexico Sub., MP 312.6 and MP 281.1, Roodhouse Sub.

Tex Mex: The Tex Mex is also operated under Direct Traffic Control and KCSR is currently dispatching train traffic on the Tex Mex out of the Dispatchers Office in Shreveport, LA. There are 112 existing Active Warning Devices, 3 existing Hotbox Detectors, 1 Spring Switch and 1 DTMF controlled Power Switch on Tex Mex. The installation of three (3) new Hotbox Detectors and power-assisted switches is planned. The power-assisted switches will be used at passing sidings to reduce risk of injury and facilitate train movement. Tex Mex will install upgraded active grade crossing warning systems as initiated and funded by state and local governments.

KCSR's and Tex Mex's procedures and practices related to signal and traffic control installations are the same.

F. Track safety standards and bridge structures
Each applicant shall identify the maintenance and inspection programs for track and bridges, and the qualification standards for roadway workers.

KCSR's and Tex Mex's inspection and maintenance practices for bridges and track are the same. The practices were integrated over a year ago and are under the direction of KCSR Engineering Department. The following is a summary of the inspection and testing practices.

Bridges – Annual inspection of bridges is performed by the KCSR and Tex Mex bridge supervisors or by Osmose. These inspections are conducted in accord with the principles set forth in the FRA's non-regulatory policy statement contained in 49 C.F.R. Part 213, Appendix C. Those principles generally require that inspections be performed at least annually (or more often if special circumstances such as earthquakes or floods warrant) in accord with good railway engineering procedures by competent engineers; that records of the inspections be maintained; and that the rail operator on the bridge remain apprised of current load limits on the bridge. If defects are identified during inspections conducted by KCSR, Tex Mex or Osmose, they are repaired immediately if necessary. All other defects are prioritized for repair and ongoing follow-up inspections. Maintenance of bridges is dictated by the wear observed through the inspection process. These procedures apply to the portion of the rail bridge between Laredo, TX and Nuevo Laredo, Tamaulipas, Mexico, which exists within the borders of the United States. Although the remainder of that bridge exists within the United States of Mexico and thus is beyond the jurisdiction of either the STB or the FRA, the same procedures generally apply to that portion of the Laredo Bridge as well.

⁵ KCSR has budgeted approximately \$400,000 for contributions towards state-sponsored grade crossing upgrade projects for 2003.

Track - On the Tex Mex, track is inspected twice a week by Assistant Roadmasters. On the KCSR, Track Supervisors perform the inspections based on FRA Class of Track. Remedial action is taken by the Track Inspector, defects are repaired, slow orders are put on the track or the track is taken out of service. If defects are identified, they are repaired immediately if necessary. All other defects are prioritized for repair and ongoing follow up inspections.

KCSR and Tex Mex track is tested at least twice a year with a track geometry car plus FRA's T-2000 car on an irregular basis. Main line track is generally tested three times a year with ultrasonic testers. On lighter duty track, the ultrasonic testing is performed twice a year and on heavier use track, the ultrasonic testing is performed four times per year. Additional testing may be performed based on tonnage, trains and usage.

Track is maintained and upgraded based on rail-wear, defects and inspection results.

Initial and annual Roadway Worker Training is provided for all roadway worker employees. This training is provided by a contractor - Track Sense - and proficiency of the employees is measured through Operations Testing.

G. Hazardous Materials
Each applicant⁶ shall identify an inspection program covering the following areas:

1. Field Inspection Practices

KCSR: The KCSR handles approximately 155,000 cars (loads/residue/intermodal) containing hazmat lading each year. KCSR leads the industry in digital management of hazardous material in transportation with its new MCS system. KCSR also leads the industry with the most comprehensive hazmat compliance inspection program. This inspection program focuses on railroad hazmat transportation compliance. Hazmat inspections may include, but are not limited to, documentation, placarding, emergency response, placement, and training. The KCSR DOT Hazardous Material Compliance Inspection Program will be made available to FRA or the STB upon request. KCSR also utilizes the services of the AAR's Bureau of Explosives hazmat inspectors for impromptu field inspections, which augments KCSR's in-house program for routinely conducting the same inspections. Finally, for maximizing immediate root cause determination and corrective action, KCSR routinely partners with local FRA hazmat inspectors at KCSR's customer service center.

Tex Mex: Tex Mex handled 7,692 hazmat cars in 2002, including loads, residue and intermodal. Tex Mex's software program prints the word "hazardous" in capital letters on all printouts including switch lists, waybills, conductor wheel reports and consists, for

⁶ As used here and elsewhere in this document, the term "applicant" has the meaning stated in 49 C.F.R. Section 244.9; *i.e.*, "a Class I railroad or Class II railroad engaging in a transaction subject to this part." In this context, those railroads are KCSR (see also footnote 2 above) and Tex Mex.

all rail cars containing hazardous materials. The program always offers to print detailed emergency response information whenever a query is made on a hazmat car. Mechanical forces do field inspections in accordance with DOT regulations. Often times terminal managers check for placarding and train placement, and review consist paperwork before train departure. In mid-June 2003 the KCSR Field Inspection Practices were implemented on the Tex Mex. This change will significantly enhance the inspection process as referenced above.

2. Hazardous Materials Communication Standards

KCSR: The KCSR utilizes many different methods and standards for effectively communicating hazards to its employees, contractors and emergency responders. For fixed facilities, KCSR has a written Hazard Communication Program, which inventories and describes all hazmat found in the workplace. The KCSR Hazard Communication Program, along with providing training, equips each employee with the knowledge of how to access and understand detailed hazmat information through provided Material Safety Data Sheets.

KCSR trains all railroad hazmat employees to hazmat Awareness Level, with refresher training every 3 years, in compliance with DOT/FRA requirements. On the KCSR, this training is provided through a combination of classroom-based training and CBT. This training provides each employee with the knowledge to recognize hazmat through the established DOT communication tools (placards, shipping documents, emergency response information, marking, labels and notations). Selected middle managers who are responsible for managing or responding to hazmat incidents are provided additional Technical Level, Specialist Level, and Incident Commander Level training.

For effective hazmat communications, KCSR provides all of its employees with in-depth hazmat regulatory resources in their KCSR Timetable, found in the section entitled “United States Hazardous Materials Instruction for Rail.” Additionally, all employees are required to carry the North American Emergency Response Guide Book. Finally, copies of the Bureau of Explosives Tariff No. BOE-6000 are available at every office location throughout the KCSR system.

Tex Mex: Training and availability of emergency information as described above are identical on the Tex Mex. The only difference is that only two managers on the Tex Mex have received formal training beyond the Awareness Level.

Integration: As noted, the Tex Mex and KCSR practices are effectively identical. All practices will become the same as part of the integration process.

3. Emergency Response Procedures

The following Emergency Response Procedures are identical on the KCSR and Tex Mex.

KCSR and Tex Mex have developed a comprehensive program to communicate, notify and respond to any release (of any quantity) or potential release of hazmat, chemical, oil or an emergency condition, accident, incident, exposure, evacuation, road closure or fire resulting from or related to such materials. Building from our well-trained employee base, all notifications are made directly to the KCSR/Tex Mex Network System Coordinator (“NSC”), located at the STC in Shreveport, Louisiana. The KCSR/Tex Mex NSC is trained to extract, capture and document all incident information. All incident notifications are logged directly into the KCSR Emergency Management Information System (“EMIS”). This system provides for immediate incident documentation, event tracking, and information dissemination to internal and external responders.

From valid information gathering, the KCSR/Tex Mex NSC then executes internal and external notifications from the procedures found in the KCSR Hazardous Material and Environmental Emergency Notification Manual. A copy of the Manual will be made available to FRA or the STB upon request. Among Federal, state, local, and KCSR internal notifications, the KCSR Environmental and Hazardous Material Department is called to evaluate all incidents and respond appropriately.

KCSR and Tex Mex have established a system-wide network of on-call, fully contracted and qualified emergency responders. This response network blankets every track mile on the KCSR / Tex Mex system and provides for immediate and timely response to any hazmat or environmental incident.

Additionally, KCSR and Tex Mex have developed Local Emergency Preparedness Plans (“LEPPs”) for individual yards and facilities, tailored to each KCSR or Tex Mex facility. LEPPs set out roles and responsibilities, locations of supplies, access routes, emergency meeting points, civilian agency contacts, notification requirements and methods for warning employees of emergency conditions. KCSR and Tex Mex also are active members of the Transportation Community Awareness and Emergency Response (“TransCAER”) program of the chemical industry. TransCAER provides information, training, and support outreach programs for communities through which hazardous materials are transported. KCSR and Tex Mex participate with the chemical industry in outreach efforts for the community leaders and responders about emergency procedures for responding to incidents involving hazmat. Additionally, KCSR and Tex Mex participate in the Operation Respond Emergency Information System (“OREIS”), which is a non-profit organization aimed at improving information resources available to emergency responders.

4. Information technology systems and personnel employed for transmitting or receiving information accompanying hazardous materials shipments. The inspection program should identify preventive measures that will be employed to respond to the potential information technology integration and hazardous materials documentation deficiencies.

KCSR: KCSR is the industry leader in information technology systems designed for railroad operations. The new KCSR MCS system was designed and built to accurately

and compliantly manage shipper hazmat data. The MCS system is designed to detect hazmat billing errors, and when they are found, immediately flag KCSR Customer Service Center representatives for corrective action. MCS continually cross-references every outbound train electronically against the system train consist data for assured accuracy. If a train placement anomaly is detected by MCS, the event is immediately flagged and corrected.

Additionally, KCSR has developed a custom, internet-based car billing system, which allows KCSR shippers to prepare their shipping documents online and then to directly link this data to the KCSR MCS system. The KCSR operates on a “no-bill, no-pull” policy which requires proper hazmat shipping papers before any car is accepted onto the KCSR system.

KCSR subscribes to the industry Electronic Data Interchange (“EDI”) standards, which govern the automatic exchange and transfer of EDI data sets between connecting carriers. KCSR employs many EDI professionals, who continually monitor and maintain compliance with the industry EDI standards. KCSR information technology systems are continually inspected and tested by the KCSR DOT Hazardous Material Compliance Inspection Program. A copy of the Program will be made available to FRA or the STB upon request. This compliance inspection program is designed to test, detect and immediately correct hazardous material document anomalies through a root-cause analysis protocol which finds and corrects deficiencies at the source, thus eliminating recurrence in the future.

Tex Mex: Tex Mex has been using RMI software, which is designed specifically for railroad operations. The RMI program also receives EDI data and transfers the information at interchanges. Tex Mex employees, instead of customers, do the billing when Tex Mex is the originating carrier. However, it is rare that Tex Mex is the initial carrier of hazmat. Nevertheless, the system does have a check and balance for data entries of hazmat for most technical information. The implementation of the MCS system will be an asset to the Tex Mex.

Integration Plan: The KCSR technology systems and processes as indicated above will be implemented on the Tex Mex as part of implementing MCS during the latter part of 2003.

H. Dispatching operations⁷

Each applicant shall identify:

1. The railroad dispatching system to be adopted;

KCSR: All territories, excluding Kansas City, Missouri, to East St. Louis, Illinois (*i.e.*, former GWWR trackage), use the ALSTOM CAD (Computer Aided Dispatch) system, DTC (Directional Authority) and CTC dispatched from the STC in Shreveport, Louisiana.

⁷ As noted in Section II, all dispatching on Tex Mex is performed from the KCSR STC.

The Kansas City, Missouri to East St. Louis, Illinois line uses the KCSR Mainframe TWC (Track Warrant) computer system to generate authorities. The train movements (OS) are documented on paper train sheets dispatched from the Kansas City Joint Dispatch Center.

Tex Mex: The Tex Mex territory is dispatched under DTC dispatched from the Shreveport STC.

2. The migration of the existing dispatching systems to the adopted system, if applicable; and

Not applicable.

3. The criteria used to determine workload and duties performed by operators or dispatchers employed to execute operations.

KCSR and Tex Mex:

- Territory Miles
- Territory Capacities and Resources
- Type of Authority
- Train Volumes (Through Freight, Roadswitcher, Locals)

I. Highway-rail grade crossing systems

Each applicant shall identify a program, including its development and implementation, covering the following:

- 1. Identification of the highway-rail grade crossings at which there will be an increase in rail traffic resulting from the Transaction;**

KCSR and Tex Mex: As outlined in the Transaction application filed with the STB, it is projected that diversions to the KCSR – Tex Mex system will increase traffic by only 17 carloads per day by the end of three years following consummation of the common control. That increase is approximately evenly divided between northbound and southbound traffic moving across the border from or to Mexico. The northbound traffic increase will principally go to Meridian, Mississippi and New Orleans, Louisiana. The operating plan projects these additional carloads can be handled on existing trains. This projection anticipates no additional crossing events based on change of control traffic in the next three years.

2. An applicant's existing grade-crossing programs as they apply to grade crossings identified in paragraph (i)(1) of this section;

As indicated above, no additional crossing events are projected to result within the next three years from the Transaction.

KCSR: Public safety is an area where dramatic improvement has occurred at KCSR. KCSR has achieved a 51% reduction in highway-rail grade crossing collisions (calendar

year 1995 - 216 collisions vs. calendar year 2002 - 105 collisions) over the last eight years, even as train traffic has increased significantly.

KCSR has been very successful in reducing crossing collisions on the system. There is a full time public safety manager and more than 25 volunteers who assist him. This investment of significant human and financial resources helped to achieve reductions of 33% in 1999, -1% in 2000, 19% in 2001 and 13% in 2002. KCSR works aggressively to clear crossings, maintain rights-of way, educate law enforcement and educate the public. A major focus in 2003 is the implementation of additional measures to help prevent trespasser incidents.

Clearing vegetation from the four quadrants at railroad crossings is an important part of the KCSR Public Safety Program. In the last two years crossing have been cleared between Meridian, Mississippi and Shreveport, Louisiana; Shreveport, Louisiana to Leesville, Louisiana; and on the north-south main line in Missouri. At the present time, the New Orleans subdivision is being cleared and the Alexandria and Beaumont subdivisions are targeted for clearing.

Tex Mex: Tex Mex has worked hard to address the public safety area, and highway rail crossing collisions and trespass incidents on Tex Mex are low. The Manager of Safety and Security supports this area as part of his job responsibilities. Tex Mex has several volunteers who provide Operation Lifesaver training to targeted groups, and efforts have been made to close crossings. The Tex Mex has also performed brush cutting at crossings on an as needed basis.

The number of KCSR and Tex Mex grade crossing collision incidents in the past 5 years has been as follows:

Tex Mex			KCSR	
Year	Crossing Collisions		Year	Crossing Collisions
1998	14		1998	195
1999	7		1999	151
2000	13		2000	152
2001	6		2001	121
2002	15		2002	105

The change of control will offer Tex Mex the services of a very experienced public safety officer. His leadership and expertise will help in the consolidation of crossings and implementation of a very aggressive Operation Lifesaver program. Even as traffic speeds on the Tex Mex increase, the public safety program will help reduce the risk of crossing collisions.

3. Integration of the grade crossing programs of the railroads subject to the transaction to the extent the programs may be different;

KCSR and Tex Mex: Upon completion of the change of control there will be an even greater focus on the consolidations of grade crossings and implementation of vegetation removal in the four quadrants of the grade crossings.

4. Emergency response actions;

KCSR: Emergency contact numbers have been posted at all public grade crossings for use in contacting the STC 24 hours per day, 7 days per week with concerns regarding crossings or related questions (877-KCS-XING). These signs allow motorists who become stalled or in any way obstruct railroad tracks to call and simply provide the information on the sign. This information includes the DOT identification number that pinpoints their location for our dispatching center and allows us to warn or stop trains in the affected area.

Grade crossing collision training is provided for local law enforcement officers to enhance their initial response and scene assessment, along with the enforcement and investigative options available to them. Firefighters and Emergency Medical Services responders are included in more task-specific training using the Operation Lifesaver approved emergency responder training.

“No Trespassing” signs are being installed at bridges, crossings and areas where pedestrians commonly trespass on railroad property.

Tex Mex: Emergency contact numbers have been posted at public grade crossings for use in contacting the 24-hour STC or the Texas Department of Transportation. These signs allow motorists who become stalled or in any way obstruct railroad tracks to call and simply provide the information on the sign. This information includes the DOT identification number that pinpoints their location for our dispatching center and allows us to warn or stop trains in the affected area.

5. Avoidance of blocked or obstructed highway-rail crossing systems by trains, locomotives, railroad cars, or other pieces of rolling equipment; and

KCSR and Tex Mex: No additional blockage or obstruction of highway-rail crossings is anticipated because no increase in train counts due to the change of control is anticipated during the next three years.

6. Signs employed for changes in rail traffic patterns.

KCSR and Tex Mex: No additional change of traffic is projected due to the change of control. Increases in train speed will not be substantial and projected crew levels are not

expected to change. As indicated in the opening comments, much of the operational integration between KCSR and Tex Mex has already taken place

J. Personnel staffing

Each applicant shall identify the number of employees by job category, current and proposed, to perform each of the following types of functions when there is a projected change of operations that will impact workforce duties or responsibilities:

- 1. Train and engine service;**
- 2. Yard and terminal service;**
- 3. Dispatching operations;**
- 4. Roadway maintenance;**
- 5. Freight car and locomotive maintenance;**
- 6. Maintenance of signal and train control systems, devices, and appliances;**
- 7. Hazardous materials operations; and**
- 8. Managers responsible for oversight of safety programs.**

No headcount changes, significant relocation of work, or changes in workforce responsibilities are projected for the Tex Mex or KCSR as a result of the change in control. KCS and Tex Mex are continuing to hire people to address attrition that is due to normal retirements, terminations and similar situations.

KCSR Personnel Staffing

CATEGORY	SALARIED	UNION	TOTAL	PROPOSED
Train & engine service	70	316	386	386
Yard & terminal service	31	850	881	881
Dispatching operations	19	47	66	66
Roadway maintenance / Signal	75	469	544	
Freight car & locomotive maintenance	22	273	295	295
Hazardous materials operations	3	0	3	3
Managers responsible for safety programs	7	1	8	8
TOTAL	227	1956	2183	2183
Other operating	48	140	188	188

TEX MEX Personnel Staffing

CATEGORY	SALARIED	UNION	TOTAL	PROPOSED
Train & engine service	8	115	123	123
Yard & terminal service	0	0	0	0
Dispatching operations	0	0	0	0
Roadway maintenance	2	18	20	20
Freight car & locomotive maintenance	1	15	16	16
Maintenance of signal & train control systems	0	2	2	2
Hazardous materials operations	.5	0	.5	.5
Managers responsible for safety programs	1.5	0	1.5	1.5
TOTAL	13	150	163	163
Other operating	7	28	35	35

K. Capital investment

Each applicant shall identify the capital investment program, clearly displaying planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall describe any differences from the program currently in place on each of the railroads involved in the transaction.

Track

KCSR: The following are lists of capital projects planned for KCSR during 2003:

- Ties: Install approximately 250,000 total for year, 206,500 on the main line and 43,500 ties on branch lines and in yards.
- Rail: Install 17.6 total track miles of rail. The rail program focuses on relaying curves with new head hardened rail. The balance of the rail is second-hand 119# and 115# rail to replace sections, dependent on test car information and service defects.
- Ballast: Dump and spread approximately 350,000 tons of ballast.
- Rail grinding: Implementing a \$1.5 million rail-grinding program.
- In-track welding: Eliminate 2,500 joints in CWR territory
- Turnouts: Replace 24 turnouts
- Highway-Rail Grade Crossings: Upgrade approximately 25 crossings.

- Bridges and culverts: Install approximately 400 feet of new steel and concrete bridge. (Approximately 205 feet have already been completed on the Beaumont Subdivision.)
- Bridges: Upgrade timber bridges with steel stringers and concrete caps, decks, and also culverts.
- Working with the State of Louisiana and the City of Pineville, the last span of a new 200-foot steel bridge over US Hwy. 165 will be installed.
- We also have a bridge underway at Tuscaloosa, Alabama that will give the city a new structure over our main line and the switching lead.
- There are 2 more highway bridges planned for this year.

Special Projects:

- 10,000-foot siding at Bovay - complete
- Phase 2 of trans-load facility with 30 car capacity at Jackson, Mississippi
- Shreveport Yard - South switching lead was rebuilt with 32 panelized switches
- Pelehatchie Yard - complete
- Two more sidings are planned for this year.
- Three miles of double main track through the IC switch tender at Jackson, Mississippi
- Trans-load facility at Coburg Yard in Kansas City
- Miscellaneous projects involving buildings, rail crossings, work equipment, etc.

The Engineering Department's capital improvement budget for 2003 is \$44 million.

Tex Mex: Tex Mex has made substantial infrastructure improvements since 1996 to help it handle its expanded operations and the tremendous increase in traffic, but more is needed. The improvements made since 1996 include a new 16-track yard and intermodal facility nine miles east of Laredo, the Serrano Yard, completed in 1998 at a cost of \$9.5 million; a new 8,500-foot siding near Robstown, completed in 1998 at a cost of \$1.5 million; a new connection at Robstown with the UP's Brownsville Subdivision, completed in 1998 at a cost of \$1 million; and a new 9,415-foot siding at Adel (on UP's Port LaVaca Branch between Victoria and Flatonia), completed in 1998 at a cost of \$2.25 million, installed 60,000 ties between MP 116-157 in year 1998 and installed 48,000 ties between MP 9-115 in year 2001. In addition, to eliminate a principal cause of slow orders on its line, Tex Mex in 2001 replaced all of the 90# rail in the main line and did certain other track work, particularly in curved sections. Nevertheless, approximately 11 miles of 110# and 112# non-control cooled rail that remain in Tex Mex's main line still need to be replaced to eliminate rail that is prone to defects. Replacement of 75# rail in Corpus Christi yard is also a priority to improve operational effectiveness there. Other related track work has also been identified as a priority on a going-forward basis.

Tex Mex estimates that an additional \$42 million in upgrades, beyond that performed in 2001, are needed to put Tex Mex's main line in condition to handle the volume of freight that is expected over the next 30 or more years. These upgrades include:

- Replacing all remaining non-control-cooled rail in the track;
- Welding all main line rail between Robstown and Laredo, either with 115# CWR or with relayed 100# CWR from the line;
- Replacing all 75# rail at Corpus Christi Yard;
- Installing at least 90,000 ties in the main line sections where ties were not replaced in 2001, and
- Installing 10,000 ties in sidings
- Rehabilitating bridges and replacing one approximately 100-foot long bridge.

Tex Mex also needs to add more sidings on its line, reducing the average spacing of sidings on Tex Mex's line from about 40 miles apart to about 20 miles apart. Tex Mex is to build 2 new sidings, extend 4 existing sidings and to rehabilitate 6 existing sidings, including the four being extended.

Presently, approximately 131 miles of Tex Mex track is rated at 40 mph and 19 miles of track is rated at 25 mph. The above referenced improvements will create a very solid track and rail infrastructure to support freight operations over the next 30 years.

Tex Mex's ability to complete these improvements depends on obtaining financing to do so. Tex Mex is in the process of seeking a Railroad Rehabilitation and Improvement Financing ("RRIF") loan from FRA to finance these improvements. These improvements will improve operational safety on Tex Mex's line by eliminating potential causes of derailments and allowing more efficient train operations, reducing train crew hours of service issues. Approval of the Transaction is expected to assist Tex Mex in its RRIF loan application.

Mechanical

KCSR: Capital Program for year 2003 - \$18,867,500

- \$18,000,000 – Rebuild of 50 locomotives
- \$72,500 – Radios - 50 units
- EOT Devices - 50 units
- Lubricators – 200 units
- Work Equipment fork lift - \$150,000
- Locomotive Drop Table - \$300,000

Tex Mex: No capital program for 2003. Tex Mex owns no locomotives. All locomotives operated by Tex Mex are leased and are subject to a contract which provides for the contractor to assure their performance and availability consistent with FRA regulations. Accordingly, no capital budget is needed with respect to leased locomotives. Tex Mex anticipates that this situation will continue for the next several years, at least.

L. Information systems compatibility

Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:

- 1. Train consists;**
- 2. Movements and movement history of locomotives and railroad freight cars;**
- 3. Dispatching operations;**
- 4. Emergency termination of operations; and**
- 5. Transportation of hazardous materials.**

KCSR and Tex Mex are currently operating under a common dispatching system and emergency termination of operations is controlled through the KCSR's STC in Shreveport, Louisiana.

During the fourth quarter of 2003, the Tex Mex will deploy the same transportation management system – MCS - that is currently used by the KCSR. This will provide consistent interchange of train consists, movements and movement history of locomotives and railroad freight cars, and information relating to the transportation of hazmat.

As indicated in Section G.4, MCS does an outstanding job of managing hazmat information. The system flags an improperly arranged train consist. The AEI reader system also identifies any hazmat cars that are not placed properly in the consist. KCSR believes that its hazmat information is some of the most accurate in the rail industry there is an ongoing improvement effort.

Although the specifics of the roll-out of MCS on Tex Mex are still being planned, the key elements of what is planned include:

- Transportation craft employees will receive approximately 8 hours of training prior to roll-out. This training includes mandatory completion of an exam to ensure that participants understand the information.
- Field operations managers will receive 1 week of training on MCS prior to the roll-out. Some clerks will receive up to 1 week of MCS training.
- An MCS team of approximately ten (10) supervisors and contractors will support Tex Mex supervisors during the roll-out process. Coverage will be provided on a 24/7 basis. The roll-out process is expected to last 4-5 months. The 24/7 coverage will be provided as long as necessary to ensure that operational and other concerns (safety, customer service, etc.) have been satisfactorily addressed.
- Several key Tex Mex officers are already accessing MCS data on a regular basis.
- Several TFM managers will also participate in the training and roll-out process to familiarize them with the system.

It is important to remember that personnel in the KCSR STC are already very familiar with MCS and the STC also manages the transportation plan. The extensive experience

of KCSR rolling out MCS on both the GWWR and the KCSR will also help facilitate a smooth roll-out of MCS.

M. SECURITY

On May 1, 2003, KCSR and Tex Mex submitted an application to become a participant in C-TPAT. C-TPAT is a Department of Homeland Security (“DHS”) system by which government and industry partner to assure against terrorist incidents resulting from transportation. The C-TPAT program is designed to share information that will protect the supply chain from being compromised by terrorists and terrorist organizations. Areas covered by the program include protection against introduction of unauthorized persons or materials into trains; securing buildings and yards against unlawful entry; protection against introduction of unmanifested cargo; personnel security such as background checks; and security awareness training.

On June 12, 2003, the new Vehicle and Cargo Inspection System (“VACIS”) facility on the U.S. end of the Laredo Bridge was opened. The VACIS facility houses a state-of-the-art gamma ray imaging system that ‘sees’ inside rail cars and intermodal equipment coming from Mexico. The DHS’s Bureau of Customs and Border Protection, formerly known as U.S. Customs Service, installed the system, unlike any other at the U.S. Mexico border. Tex Mex built the two-story structure housing the system. This unique new system adds a new level of protection for the U.S. against terrorist activity. As NAFTA Rail increases its competitiveness with trucks, a higher proportion of U.S./Mexico traffic will move through the VACIS facility.

IV. IMPLEMENTATION OF SAFETY INTEGRATION PLAN

Because of the substantial operational integration of KCSR and Tex Mex, as described herein, only a few steps are needed to complete the integration of safety programs of the two railroads. Some of those steps have previously been described herein, including under the subheadings Integration. Additional steps to be taken and listed below and further defined on the attached Implementation Table.

- Training session will be held with Tex Mex Safety Committee(s) to support improved understanding of roles, offer improved job skills and supporting even greater passion for safety leadership.
- Tex Mex and KCSR operations testing to be integrated. The General Director Rules and Testing will support assisting managers in enhancing their testing skills and helping raise standards. Database will be expanded to include Tex Mex supervisors and employees. Support to be provided starting in 3rd quarter.
- Perform review and develop action plan related to Public Safety process at Tex Mex. Perform in 3rd quarter of 2003.
- Evaluate and make recommendation / decision on the expansion of CBT training to the Tex Mex. Decision will be made no later than 1st quarter 2004.
- Develop plan for the implementation of RCL technology on the Tex Mex. Timing has not yet been determined.
- Implement MCS in 3rd and/or 4th quarter of 2003.

SAFETY INTEGRATION PLAN – KCSR / TEX MEX
IMPLEMENTATION TABLE

Description	Timing	Resource	Accountability	Comments
Training Session with Tex Mex Safety Committee 1. Training Session all committee members 2. Inclusion in regional safety meetings and SACP process.	4 th qtr 2003 3 rd qtr 2003	\$20,000 10 emp. days	Tom Leopold / Jim Riney / Jerry Heavin	This will foster greater craft employee ownership and influence for safety. This involvement of Tex Mex in the SACP process will assist in communication with all parties. (Training and meetings are a normal part of a person's job and compensation, and so are not treated here as an additional expense.)
Integration of Operations Testing Process 1. Introductory training on KCSR Operations Testing Process 2. Provide field coaching and evaluate field manager on Operations testing. 3. Expand Database to include Tex Mex supervisors.	Complete 4 th qtr 2003 4 th qtr 2003	\$5,000	Dennis Marzec / Victor Garcia	The very successful KCSR program will help raise safety standards and enhance rules knowledge and compliance on the Tex Mex.
Review Public Safety Process and Develop Action Plan 1. Review public safety process at Tex Mex. 2. Develop action plan to enhance process.	3 rd qtr 2003 4 th qtr 2003	\$5,000 TBD based on review.	Allen Pepper / Victor Garcia	The additional expertise and experience that Mr. Pepper will add to the process should help reduce the risks of crossing collisions and trespasser incidents.

SAFETY INTEGRATION PLAN – KCSR / TEX MEX
IMPLEMENTATION TABLE

Computer Based Training 1. Perform needs assessment for application of CBT. 2. Identify cost considerations. 3. Procure any applicable equipment and software.	4 th qtr 2003 1 st qtr 2004	TBD \$20,000	Tom Leopold / Victor Garcia	Strategic decisions will be made at KCSR and Tex Mex to determine the future growth and use of CBT.
Remote Control Technology 1. Expand the Certification of Locomotive Engineers and Remote Control Operators Submission to include Tex Mex. 2. Develop projected schedule for implementation of RCL on the Tex Mex. 3. Install any necessary RCL equipment on locomotives 4. Train applicable transportation employees on RCL in accord with Section III.C.3 of the accompanying SIP.	2003 – 2004	TBD	Mike Chapman / Jim Riney	A decision as to when to introduce RCL technology on the Tex Mex has not yet been made. See text in body of SIP for additional information.
Implement MCS 1. Develop schedule for implementation of MCS 2. Train on MCS prior to implementation, as indicated in Section III.L.3 of the accompanying SIP. 3. Bring in MCS team and support personnel to lead MCS initiative, as indicated in Section III.L.3 of the accompanying SIP.	3 th qtr 2003 3 rd qtr 2003 3 rd – 4 th qtr 2003	TBD	Scott Arvidson	Meetings are planned for July to identify the specific roll-out timing of MCS on the Tex Mex. The extensive experience of KCSR on this system and significant integration between KCSR and Tex Mex will help facilitate a smooth implementation of MCS.

SAFETY INTEGRATION PLAN – KCSR / TEX MEX
IMPLEMENTATION TABLE

Hazmat Supervisor Training 1. Develop hazmat supervisor level training course 2. Provide training to all KCSR and Tex Mex trainmasters, yardmaster and higher.	4 th qtr 2003 3 rd & 4 th qtr 2004	\$30,000	Chet Culley	This advanced training will be provided to selected individuals to further enhance emergency response on the KCSR and Tex Mex.
Track Improvements on Tex Mex 1. Details of Tex Mex's planned main line rehabilitation project and expansion of existing sidings are contained in the SIP.	2003-2004 (timing will depend on completion of revised loan application and the loan processing period; the track project is designed to be completed within 12 months of availability of funding.)	\$50,000,000	Federal Railroad Administration	The completion of various capital improvements on Tex Mex that are discussed in the body of the SIP is heavily dependent upon the approval and timing of the RIFF loan.